S. HRG. 101-247, PT. 4B

# REPORT OF THE SENATE IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE WALTER L. NIXON, JR.

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## HEARINGS

BEFORE THE

## SENATE IMPEACHMENT TRIAL COMMITTEE
## UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

THE ARTICLES OF IMPEACHMENT AGAINST JUDGE WALTER L. NIXON, JR., A JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, FOR HIGH CRIMES AND MISDEMEANORS

PRIOR RECORD ADMITTED INTO EVIDENCE:
HOUSE OF REPRESENTATIVES IMPEACHMENT INQUIRY

**Part 4B of 4 Parts**
**Vol. II**

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ON THE ARTICLES AGAINST JUDGE WALTER L. NIXON, JR.

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---

# HEARINGS

BEFORE THE

SUBCOMMITTEE ON
CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

H. RES. 407, IMPEACHING WALTER L. NIXON, JR., JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, FOR HIGH CRIMES AND MISDEMEANORS

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JUNE 9, 10, JULY 6, 7, 8, AND 12, 1988

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## Serial No. 96

Printed for the use of the Committee on the Judiciary

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MAR 15 1988

JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

L. RALPH MECHAM
Secretary

RECEIVED
MAR 17 1988
GENERAL COUNSEL

CERTIFICATE

TO THE SPEAKER, UNITED HOUSE OF REPRESENTATIVES:

The Judicial Conference of the United States, acting pursuant to section 331 of title 28, United States Code, does hereby certify as follows:

1. On February 11, 1988, the Judicial Council of the Fifth Circuit certified to the Judicial Conference, as provided by 28 U.S.C. § 372(c)(7)(B), that United States District Judge Walter L. Nixon, Jr., of the Southern District of Mississippi has engaged in conduct which might constitute one or more grounds for impeachment under Article I of the United States Constitution.

2. The Judicial Conference has excercised its authority under 28 U.S.C. § 372(c)(8) to consider the certificate of the Judicial Council of the Fifth Circuit. In so doing, the Judicial Conference had before it certified official records of judicial proceedings manifesting as follows:

> On March 31, 1986, Judge Nixon was convicted of two counts of violating section 1623 of title 18, United States Code.
>
> On January 19, 1988, Judge Nixon's conviction became final upon denial of a petition for writ of certiorari by the Supreme Court of the United States.

3. Pursuant to Rule 1 of the Rules for Processing of Certificates from Judicial Councils that a Judicial Officer Might Have Engaged in Impeachable Conduct, the Judicial Conference considers no additional investigation by the Conference itself to be appropriate. It is apparent that the certification by the Judicial Council is premised entirely upon a judgment of conviction in a criminal case and that the judgment has become final. As provided in 28 U.S.C. § 372(c)(8), the Judicial Conference concurs in the determination of the Judicial Council that Judge Nixon has engaged in conduct which might constitute one or more grounds for impeachment under Article I of the Constitution.

4. Consideration of the impeachment of Judge Nixon may be warranted.

There are attached the certificate of the Judicial Council of the Fifth Circuit to the Judicial Conference, a letter, dated February 26, 1988, to the Judicial Conference of the United States from the Acting Chief Judge of the Fifth Circuit, and certified copies of the judgment and commitment order of the United States District Court for the Southern District of Mississippi entered on March 31, 1986; the judgment of the United States Court of Appeals of the Fifth Circuit on April 30, 1987, affirming the judgment of the District Court, supported by opinions issued on April 30, 1987, affirming the judgment and on September 8, 1987, denying Judge Nixon's petition for rehearing and suggestion for rehearing en banc; and an order of the Supreme Court of the United States, dated January 19, 1988, denying the petition for writ of certiroari filed by Judge Nixon.

Executed this 15th day of March, 1988.

Ralph Mecham

L. Ralph Mecham*
Secretary

---

*The Chief Justice and Judge Charles Clark were not present and did not participate in the deliberations of the Judicial Conference with respect to the subject matter of this certificate. Judge L. T. Senter, Jr., though present, did not participate.

IV

100TH CONGRESS
2D SESSION

# H. RES. 407

Impeaching Walter L. Nixon, Jr., judge of the United States District Court for the Southern District of Mississippi for high crimes and misdemeanors.

---

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 1988

Mr. RODINO (for himself, Mr. EDWARDS of California, Mr. FISH, and Mr. SENSENBRENNER) submitted the following resolution; which was referred to the Committee on the Judiciary

---

# RESOLUTION

Impeaching Walter L. Nixon, Jr., judge of the United States District Court for the Southern District of Mississippi for high crimes and misdemeanors.

*Resolved*, That Walter L. Nixon, Jr., judge of the United States District Court for the Southern District of Mississippi, is impeached for high crimes and misdemeanors.

○

COMMITTEE EXHIBIT NO. 1

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
AUG 19 1980
HARVEY C. HENDERSON, CLERK
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

VS. CRIMINAL NO. H80-00005(C)

MALCOLM DAVID NATHAN,
MARIO TORRES AND
KENNETH ROBERT HATFIELD, JR.

GOVERNMENT EXHIBIT 7

The Grand Jury charges:

COUNT I

That MALCOLM DAVID NATHAN, MARIO TORRES and KENNETH ROBERT HATFIELD, JR., defendants herein, on or about July 27, 1980, and continuing through August 4, 1980, in the Hattiesburg Division of the Southern District of Mississippi and elsewhere, knowingly and willfully did combine, conspire, confederate and agree together and with each other and with others known and unknown to the grand jury to commit the following offenses against the United States:

To knowingly and intentionally distribute and possess with intent to distribute marihuana, a Schedule I(c) non-narcotic drug controlled substance, in violation of Section 841(a)(1), Title 21, United States Code;

All in violation of Section 846, Title 21, United States Code.

It was part of the conspiracy that the defendants would knowingly make arrangements to land an aircraft at the Hattiesburg Municipal Airport, Forrest County, Mississippi, on August 4, 1980, on which was situated approximately 2,200 pounds of marihuana, the defendants having made arrangements to offload the marihuana into a waiting truck.

075-55

COUNT II

That on or about August 4, 1980, in the Hattiesburg Division of the Southern District of Mississippi, MALCOLM DAVID NATHAN and MARIO TORRES knowingly and intentionally did possess with intent to distribute about 2,200 pounds of marihuana, a Schedule I(c) non-narcotic drug controlled substance, in violation of Section 841(a)(1), Title 21, United States Code.

COUNT III

That from on or about August 3, 1980 to August 4, 1980, MALCOLM DAVID NATHAN, MARIO TORRES and KENNETH ROBERT HATFIELD, JR., did travel in interstate commerce from outside the State of Mississippi to and between other states and the State of Mississippi, with the intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of an unlawful activity, the unlawful activity being a business enterprise involving marihuana, a controlled substance, in violation of Sections 841 and 846, Title 21, United States Code, and defendants did thereafter perform and attempt to perform acts to promote, manage, carry on and facilitate the promotion, management and carrying on of the unlawful activity previously described, in violation of Sections 1952(a)(3) and 2, Title 18, United States Code.

UNITED STATES ATTORNEY

A TRUE BILL:

Foreman of the Grand Jury

EXHIBIT NO. G-7 EVID
CAUSE NO. J85-00012(L)
WITNESS George Phillips
PAGES 3

JAN 28 1986

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
Dave Scott REPORTER

COMMITTEE EXHIBIT NO. 2

UNITED STATES GOVERNMENT
**memorandum**

DATE: November 19, 1980

REPLY TO ATTN OF: James B. Tucker
Chief, Criminal Division

SUBJECT: Redditt Andrew Fairchild

TO: Hon. William F. Porter
Attorney at Law

## MEMORANDUM OF UNDERSTANDING

Drew Fairchild and his attorney, William F. Porter, have been notified that:

If Fairchild cooperates fully with the government concerning all information and, knowledge that he has regarding violations of the Controlled Substances Act (21 U.S.C. 841, et seq.) and all methods of transportation, possessions or distributions of controlled substances, including any interstate violations by any person or association of person, and all exchanges of moneys, controlled substances or any other things of value between any persons, as a result of any aforedescribed transactions;

Thereafter, the government will do the following:

1. Upon a tender of a plea of guilty by Fairchild to felony charges of violating offenses against the United States, whether the charge be by indictment or information, the government will recommend that the Court accept his plea of guilty to the charges and further recommend that the Court sentence Fairchild to a five-year term of imprisonment, suspend execution of the sentence, a fine in the sum of $15,000, and place Fairchild on probation for a period of five years, a special condition of probation being that Fairchild pay the fine forthwith.

It is understood that, as of the date of this memo Fairchild and his attorney have both indicated that he desires to plead guilty to offenses that he has committed against the United States, but that the government reserves the right to unlimited discretion in determining, selecting and describing the offenses committed, the contents and charging part of the indictment or information, and time of filing or presenting charges.

W.F.P.

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

It is further understood that the Court, in accord with the principles of Rule 11, Federal Rules of Criminal Procedure, is not required to accept the recommendation aforedescribed, and the government has no other obligation than as stated in paragraph No. 1.

It is further understood that this memorandum completely reflects all promises, agreements and conditions made by and between the United States Attorney for the Southern District of Mississippi and Fairchild.

It is further understood that the government can proceed by information only if Fairchild waives his right to indictment by grand jury as provided in Rule 7(b), Federal Rules of Criminal Procedure.

It is further understood that Fairchild will truthfully and completely reveal to the government all incidents and circumstances relating to the matters described in the introductory paragraph. Furthermore, Fairchild's complete cooperation, as indicated in the introductory paragraph includes: (1) Immediate disclosure of the matters to federal agents of the Federal Bureau of Investigation; (2) Testimony before a grand jury, if necessary, in any district deemed appropriate by the government; and (3) Testimony at any trial, if necessary, involving the matters described in the introductory paragraph.

It is further understood that should Fairchild commit any further crimes, this memorandum shall be deemed violated and be subject to prosecution for any federal criminal violation of which this office has knowledge, and that any information provided by him may, if appropriate, be used against him.

It is further understood that should Fairchild fail or refuse as to any part of this memorandum, all representations by the government are rescinded.

It is further understood that no information given by Fairchild in response to this memorandum will be used against him in any criminal case, except as described in paragraph number 1, and except in a prosecution for perjury, and except if he violates any provision of this memorandum, in which events it is specifically understood and agreed that all information given by him, or derivatives thereof, shall be admissible in evidence in any proceedings against him.

It is further understood that this memorandum cannot bind other federal district, state or local prosecuting authorities; however, this office shall and will, if requested, bring Fairchild's cooperation to the attention of the other prosecuting authorities.

Jackson, Mississippi, this 19 day of November, 1980.

James B. Tucker
JAMES B. TUCKER
Chief, Criminal Division

AGREED TO:

R A Fairchild
REDDITT ANDREW FAIRCHILD,
Defendant

William F. Porter
WILLIAM F. PORTER,
Of Counsel for Defendant

COMMITTEE EXHIBIT NO. 3

# ASSIGNMENT OF OVERRIDING ROYALTY ON OIL AND GAS

GOVERNMENT EXHIBIT 8

THE STATE OF MISSISSIPPI
County of ____[illegible]____ | KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, [illegible] under date of ____ November [illegible], 1974 ____

TRAVIS WICKS, a Single Man (Divorced),

as Lessor, did execute and deliver to ____ F. A. FAIRCHILD CONSTRUCTION CO., LTD. ____

as Lessee, an oil, gas and mineral lease covering the following described lands, situated in [illegible] County, Mississippi, to-wit:
Alabama

[illegible]

THIS CONVEYANCE [illegible] OF PROPERTY [illegible]

said lease being recorded in ____ Real Property Book [illegible] Page [illegible] ____ of the Conveyance Records of said County, reference to which is here made for all purposes; and

Whereas said lease or an overriding royalty thereunder is now owned by the undersigned:

NOW, THEREFORE, the undersigned ____ F. A. FAIRCHILD CONSTRUCTION CO., LTD. ____

for and in consideration of ____ [illegible] ____ Dollars

and other valuable considerations cash to [illegible] in hand paid by ____ [illegible] ____

the receipt whereof is hereby acknowledged, does hereby bargain, sell and assign unto ____ [illegible] ____

[illegible] an overriding royalty equal to

[illegible] part of all oil which may be produced and saved by Lessee, his heirs, successors or assigns from said premises under and by virtue of the above mentioned lease, delivery of such oil to be made free of cost to the credit of assignee in storage tanks provided by assignee or into the pipe line to which the wells on said premises may be connected. On dry gas or casinghead gas [illegible] marketed from said premises, under

and by virtue of the above mentioned lease, assignee shall be paid [illegible] proportionate part [illegible]

[illegible] of the net proceeds of the [illegible] derived therefrom, and on casinghead gas or other gaseous or vaporous substances produced from said premises under and by virtue of said lease

and utilized by Lessee, his successors and assigns in the manufacture of gasoline, assignee shall be paid

[illegible] proportionate [illegible] part of the current market value at the well of the [illegible] [illegible]

Fuel oil and gas for operations [illegible] [illegible]

As to production [illegible] [illegible]

# ASSIGNMENT OF OVERRIDING ROYALTY
# ON OIL AND GAS

THE STATE OF MISSISSIPPI
County of FORREST
} KNOW ALL MEN BY THESE PRESENTS: that

WHEREAS, heretofore, under date of November 5, 1974

TRAVIS HICKS, a Single Man (Divorced)

as Lessor, did execute and deliver to W. R. FAIRCHILD CONSTRUCTION CO., LTD.

as Lessee, an oil, gas and mineral lease covering the following described lands, situated in Mobile County, [redacted] to wit:
Alabama

******SEE ATTACHMENT HERETO AND MADE A PART HEREOF******

THIS CONVEYANCE IS TO BE EFFECTIVE FROM THE FIRST DAY OF PRODUCTION.

said lease being recorded in Real Property Book 1400 Pages 0449-0450 of the Conveyance Records of said County, reference to which is here made for all purposes; and,

Whereas, said lease or an overriding royalty interest therein is now owned by the undersigned.

NOW, THEREFORE, the undersigned W. R. FAIRCHILD CONSTRUCTION CO., LTD.

for and in consideration of -------- TEN -------------- ($ 10.00 ) Dollars

and other valuable considerations cash to him in hand paid by

the receipt whereof is hereby acknowledged, does hereby bargain, sell and assign unto

an overriding royalty equal to

3/20th of 1/8th part of all oil which may be produced and saved by Lessee, his heirs, successors, or assigns from said premises under and by virtue of the above mentioned lease, delivery of such oil to be made free of cost to the credit of assignee into storage tanks provided by assignee, or into the pipe line to which the wells on said premises may be connected. On dry gas or casinghead gas, when marketed from said premises, under and by virtue of the above mentioned lease, assignee shall be paid A Proportionate Part of ~~part of~~ the net proceeds at the wells derived therefrom; and on casinghead gas or other gaseous or vaporous substance produced from said premises under and by virtue of said lease, and utilized by Lessee, his successors and assigns in the manufacture of gasoline, assignee shall be paid A proportionate part of the current market value at the wells of the casinghead gas or other gaseous or vaporous substance so utilized, and assignor shall not be required to make settlement with assignee therefor until assignee shall have executed and delivered to assignor the form of casinghead division order then in use by assignor covering the casinghead gas so utilized.

Fuel oil and gas for operating the premises, and for treating and handling the products therefrom, (and the proportionate part of fuel oil and gas consumed in a central plant, should this lease be operated jointly with other premises through the use of such plant) shall be deducted before said overriding royalties on oil and gas are computed.

After production is secured from said premises, Lessee, his heirs, successors or assigns may, in lieu of using the identical fuel produced on said premises, procure fuel otherwise and charge the same against current production from the leased premises, and said overriding royalties on oil and gas shall in that event be computed on the basis of the net oil produced and saved, and the net gas produced and marketed from said premises, after the deduction of the amount of, and/or charges for the oil and gas so used for fuel.

The overriding royalties herein assigned are assigned subject to the right and power of assignor, and such right and power is hereby reserved by assignor, insofar as the overriding royalties herein assigned may be affected thereby, to pool or combine the acreage covered by the lease above described, or any portion thereof, as to oil and gas, or either of them, with other land, lease or leases in the immediate vicinity thereof to the extent hereinafter stipulated, when in assignor's judgment it is necessary or advisable to do so in order properly to explore or to develop and operate said leased premises in compliance with the orders, rules and regulations of State and Federal Governmental authority, or when to do so would, in the judgment of assignor, promote the conservation of oil and gas from said premises. Units pooled for oil hereunder shall not substantially exceed 40 acres in area, and [illegible] NW1/4, [illegible] SE1/4 Sec. 28-T2S-[illegible] undiv. 1/2 int SE/2 of E1/2 [illegible] of SE1/4 Sec, 28-T2S-R1W, exc. pt into [illegible] Ct MBK 23 P 6, R/W E JoGinsoll Dr; cont[illegible] 20 Acres, more-or less.

IT IS THE INTENT OF THE GRANTOR TO CONVEY AN INTEREST TO A DEPTH OF 100 FEET BELOW THE DEPTH OF ANY WELL NOW BEING DRILLED OR CURRENTLY IN PRODUCTION ON SAID ACREAGE.

IT IS THE INTENT OF THE GRANTOR TO CONVEY ONE (1) FULL OVERRIDING ROYALTY ACRES IN THE ABOVE DESCRIBED PROPERTY.

SIGNED FOR IDENTIFICATION

WITNESSES:

R L [illegible] Jr.

[illegible] FAIRCHILD

Henry B[illegible]

122-276

BEST AVAILABLE COPY

GOVERNMENT EXHIBIT 9

SUPERSEDING

# ROYALTY DEED

(Term)

*Know All Men By These Presents:*

STATE OF Mississippi

COUNTY OF Forrest

I hereby certify that on this day, before me, a NOTARY PUBLIC [illegible]

WILEY FAIRCHILD

[illegible]

Given under my hand and official seal, this 25th day of February, A.D. 19 81

(Affix Seal)

Lynnette [illegible] Smith

Notary Public

(Title of Officer)

My commission expires 12-27-82 in and for Forrest County Mississippi

WITNESS ACKNOWLEDGMENT

[illegible]

STATE OF

COUNTY OF

I, a [illegible]

[illegible]

(Subscribing Witness)

Given under my hand and official seal, this day of 19

(Affix Seal)

(Title of Officer)

My commission expires in and for County,

Exhibit No. 6-9 EVG

[illegible]

JAN 29 1986

[illegible]

OVERRIDING

ROYALTY DEED

FROM

TO

[illegible]

OVERRIDING

# ROYALTY DEED

(Term)

GOVERNMENT EXHIBIT 10

*Know All Men By These Presents*

[illegible]

STATE OF Mississippi

COUNTY OF Forrest

[illegible] NOTARY PUBLIC

[illegible]

WILEY FAIRCHILD

[illegible]

[illegible] 26th [illegible] February [illegible]

[illegible]

Notary Public

[illegible] 12-27-82 [illegible]

STATE OF

COUNTY OF

[illegible]

OVERRIDING

ROYALTY DEED

COMMITTEE EXHIBIT NO. 4

# UNITED STATES OF AMERICA

## STATE OF ALABAMA

IN THE PROBATE COURT OF MOBILE COUNTY

I, Joe D. McEarchern, Jr., Chief Clerk of the Probate Court in and for said County and State, do hereby certify, that the annexed 3 Page(s) is a true and correct copy of the instrument recorded in Real Property Book 2401 Page 406 et seq.

as the same appears of record in the said Probate Court,

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court, in the City of Mobile, this the 11th day of December in the year of our Lord one thousand nine hundred Eighty-Five and of the Independence of the United States the 210th year

Chief Clerk

## STATE OF ALABAMA

Mobile County

I, L. W. NOONAN, sole Judge of the Probate Court of Mobile County, in the State of Alabama, do hereby certify that Joe D. McEarchem, Jr., is the Chief Clerk of said Court; that the same is a Court of Record, having probate jurisdiction, and that the signature of Joe D. McEarchern, Jr., Chief Clerk, to the foregoing certificate is in proper handwriting of him, the said Joe D. McEarchern, Jr., Chief Clerk, to his official acts as such, full faith and credit are due and owing, and I do further certify that his attestation is in due form of law.

GIVEN, under my hand and seal of said Court, in the City of Mobile, on this 11th day of December A.D. 19 85

Probate Judge

I, Joe D. McEarchem, Jr., Chief Clerk of the Probate Court of Mobile County, in the State of Alabama, do hereby certify that L. W. NOONAN, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing the same, sole Judge of the Probate Court of Mobile County, duly elected and commissioned, and qualified as such, and that said attestation is in due form of law.

WITNESS, My hand and seal of said Court, this 11th day of December A.D 1985

Chief Clerk

[illegible]

787272

# ASSIGNMENT OF OVERRIDING ROYALTY ON OIL AND GAS

THE STATE OF MISSISSIPPI
County of FORREST

KNOW ALL MEN BY THESE PRESENTS: that

WHEREAS, heretofore, under date of November 5, 1974

TRAVIS HICKS, a Single Man (Divorced)

as Lessor, did execute and deliver to W. R. FAIRCHILD CONSTRUCTION CO., LTD.

as Lessee, an oil, gas and mineral lease covering the following described lands, situated in Mobile County, ~~Mississippi~~ to wit:

TOWNSHIP 2 SOUTH, RANGE 1 WEST

NW1/4 of SE1/4 Sec 26 T2S, R1W, undiv. 1/2 int S1/2 of E1/2 of N1/2 of SE1/4, Sec. 28-T2S-R1W, exc. pt into Suburban Ct MBK 23 P 6, R/W JoGinnell Dr. containing 20 Acres, more or less.

IT IS THE INTENT OF THE GRANTOR TO CONVEY AN INTEREST TO A DEPTH OF 100 FEET BELOW THE DEPTH OF ANY WELL NOW BEING DRILLED OR CURRENTLY IN PRODUCTION ON SAID ACREAGE.

IT IS THE INTENT OF THE GRANTOR TO CONVEY THREE (3) FULL OVERRIDING ROYALTY ACRES IN THE ABOVE DESCRIBED PROPERTY.

SIGNED FOR IDENTIFICATION

WITNESSES:

Billy Riley

W. R. FAIRCHILD CONSTRUCTION CO. LTD.

RILEY FAIRCHILD
Partner and General Manager

BK 240 PG 408

******SEE ATTACHMENT HERETO AND MADE A PART OF HEREOF******

THIS CONVEYANCE IS TO BE EFFECTIVE FROM THE FIRST DAY OF PRODUCTION.

said lease being recorded in Real Property Book 1400 Pages 0449-0450 of the Conveyance Records of said County, reference to which is here made for all purposes, and,

Whereas, said lease or an overriding royalty interest therein is now owned by the undersigned

NOW, THEREFORE, the undersigned W. R. FAIRCHILD CONSTRUCTION CO., LTD.

for and in consideration of -------- TEN ------------- ($ 10.00 ) Dollars

and other valuable considerations cash to him in hand paid by Walter L. Nixon, Jr.

the receipt whereof is hereby acknowledged, does hereby bargain, sell and assign unto

Walter L. Nixon, Jr., P. O. Drawer A,
Biloxi, Mississippi 39533

an overriding royalty equal to

✓ 3/20th of 1/8th part of all oil which may be produced and saved by Lessee, his heirs, successors, or assigns from said premises under and by virtue of the above mentioned lease, delivery of such oil to be made free of cost to the credit of assignee into storage tanks provided by assignee, or into the pipe line to which the wells on said premises may be connected. On dry gas or casinghead gas, when marketed from said premises, under and by virtue of the above mentioned lease, assignee shall be paid A Proportionate Part of ~~part of~~ the net proceeds at the wells derived therefrom; and on casinghead gas or other gaseous or vaporous substance produced from said premises under and by virtue of said lease, and utilized by Lessee, his successors and assigns in the manufacture of gasoline, assignee shall be paid A proportionate part of the current market value at the wells of the casinghead gas or other gaseous or vaporous substance so utilized, and assignor shall not be required to make settlement with assignee therefor until assignee shall have executed and delivered to assignor the form of casinghead division order then in use by assignor covering the casinghead gas so utilized.

Fuel oil and gas for operating the premises, and for treating and handling the products therefrom, (and the proportionate part of fuel oil and gas consumed in a central plant, should this lease be operated jointly with other premises through the use of such plant) shall be deducted before said overriding royalties on oil and gas are computed.

After production is secured from said premises, Lessee, his heirs, successors or assigns may, in lieu of using the identical fuel produced on said premises, procure fuel otherwise and charge the same against current production from the leased premises, and said overriding royalties on oil and gas shall in that event be computed on the basis of the net oil produced and saved, and the net gas produced and marketed from said premises, after the deduction of the amount of, and/or charges for the oil and gas so used for fuel.

The overriding royalties herein assigned are assigned subject to the right and power of assignor, and such right and power is hereby reserved by assignor, insofar as the overriding royalties herein assigned may be affected thereby, to pool or combine the acreage covered by the lease above described, or any portion thereof, as to oil and gas, or either of them, with other land, lease or leases in the immediate vicinity thereof to the extent, hereinafter stipulated, when in assignor's judgment it is necessary or advisable to do so in order properly to explore or to develop and operate said leased premises in compliance with the orders, rules and regulations of State and Federal Governmental authority, or when to do so would, in the judgment of assignor, promote the conservation of oil and gas from said premises. Units pooled for oil hereunder shall not substantially exceed 40 acres in area, and units pooled for gas hereunder shall not substantially exceed in area 320 acres plus a tolerance of 10% thereof, provided that should governmental authority having jurisdiction prescribe or permit the creation of units larger than those specified, units thereafter created may conform substantially in size with those prescribed by governmental regulations. Assignor under the provisions hereof may pool or combine acreage covered by the lease above described, or any portion thereof as above provided as to oil in any one or more strata and as to gas in any one or more strata. The units formed by pooling as to any stratum/or strata need not conform in size or area with the unit or units into which said lease is pooled or combined as to any other stratum or strata, and oil units need not conform as to area with gas units. The pooling in one or more instances shall not exhaust the rights of assignor to pool the lease above described or portions thereof into other units. Assignor shall file for record in the appropriate records of the county in which the leased premises are situated an instrument describing and designating the pooled acreage as a pooled unit. The pooled unit may include, but it is not required to include, land or leases upon which a well capable of producing oil or gas in paying quantities has theretofore been completed or upon which operations for the drilling of a well for oil or gas have theretofore been commenced. Assignor may at its election exercise its pooling option after commencing operations for or completing an oil or gas well on the leased premises. The entire acreage so pooled into a unit shall be treated for all purposes, except the payment of royalties on production from the pooled unit, as if the same were included in the lease above described. In lieu of the overriding royalties hereby assigned and which may become payable on production from a pooled unit, there shall be allocated to the land covered by the lease above described and included in said unit a pro rata portion of the oil and gas, or either of them, produced from the pooled unit, after deducting therefrom that used for operations on the pooled unit, and in addition thereto, as to gas, that which may be furnished to the lessors therein for use on such leases in accordance with their terms. Such allocation shall be on an acreage basis, that is to say, there shall be allocated to the acreage covered by the lease above described and included in the pooled unit that pro rata portion of the oil and gas, or either of them, produced from the pooled unit which the number of surface acres covered by the lease above described and included in the pooled unit bears to the total number of surface acres included in the pooled unit. Overriding royalties payable hereunder shall be computed on the portion of such production whether it be oil and gas, or either of them, so allocated to the land covered by the lease above described and included in the unit just as though such production were from such land. Any pooled unit designated by assignor in accordance with the terms hereof, may be dissolved by assignor by instrument filed for record in the appropriate records of the county in which the leased premises are situated at any time after completion of a dry hole or the cessation of production on said unit.

It is expressly agreed that operations, if any, on said premises, and the extent and duration thereof, as well as the preservation of the leasehold, by rental payments or otherwise, shall be solely at the will of Lessee, his heirs, successors or assigns.

If Lessor in said lease owns a less interest in the premises covered thereby than the entire and undivided fee, then said overriding royalties shall be payable to assignee herein in the proportion which the interest of the Lessor in said land bears to the entire and undivided fee.

The assignment is made without warranty, either express or implied. The terms hereof shall extend to and be binding upon the parties hereto, their heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, this instrument is executed on this the 25th day of February A. D. 19 80

Wiley Fairchild
Partner and General Manager of W. R. Fairchild Construction Co., Ltd.

---

STATE OF MISSISSIPPI,
County of FORREST

THIS DAY personally appeared before me, the undersigned Notary Public in and for said County and State, the within named WILEY FAIRCHILD who acknowledged that he signed and delivered the within and foregoing instrument on the day and year therein mentioned.

GIVEN under my hand and seal of office, this 25th day of February A. D. 19 80

Lynnette F. Smith
Notary Public.

(Affix Seal)

My Commission expires 12-27-82

[illegible]ARED BY:
[illegible]ey Fairchild
[illegible] O. Box 1857
[illegible]ttiesburg, MS 39401

55-53

RECORD FEE 5.00
STATE OF MISSISSIPPI
I CERTIFY THIS INSTRUMENT WAS FILED FOR
Oct 13 10 AM '82
[illegible]

GOVERNMENT
EXHIBIT
13

This is a true and correct copy
this the 3 day of Jan 1986
CODY M. BUCKLEY
CHANCERY CLERK
Barbara Ham DC

Form M-107 Rev. 11-74
Mississippi-Alabama-Florida

Printed and for sale by Hederman Bros. Jackson, Miss.

# OVERRIDING ROYALTY DEED

(Term)

BOOK 836 PAGE 258

*Know All Men By These Presents:*

That W. R. FAIRCHILD CONSTRUCTION CO., LTD. for and in consideration of the price and sum of ---------------- TEN ---------------- ($ 10.00 ) Dollars and other valuable considerations, cash in hand paid by WALTER L. NIXON, JR. hereinafter referred to as grantee, has granted, bargained, sold and conveyed, and does by these presents grant, bargain, sell and convey, unto the said grantee the mineral royalty interest hereinafter set out affecting and relating to the following described lands in the County of Marion, State of Mississippi, to-wit:

TOWNSHIP 5 NORTH, RANGE 19 WEST

Section 28: NE¼ of SE¼; S½ of SE¼; N½ of SW¼ of SW¼; SE¼ of SW¼; N½ of SW¼ and S½ of NW¼

IT IS THE INTENT OF THE GRANTOR TO CONVEY AN INTEREST TO A DEPTH OF 100 FEET BELOW THE DEPTH OF ANY WELL NOW BEING DRILLED OR CURRENTLY IN PRODUCTION ON SAID ACREAGE.

IT IS THE INTENT OF THE GRANTOR TO CONVEY THREE (3) FULL OVERRIDING ROYALTY ACRES.

THIS CONVEYANCE IS TO BE EFFECTIVE FROM THE FIRST DAY OF PRODUCTION.

MISSISSIPPI TAX CANCELLED MARION CO. MISSISSIPPI

This conveyance shall be for a period of TWO years from date hereof, and as long thereafter as oil, gas or other minerals are produced from said lands, or from lands with which said lands are pooled or unitized, and also as long thereafter as drilling or reworking operations are being conducted on said lands, or on lands pooled or unitized therewith, without more than 90 days cessation of operations, in an effort to produce oil, gas or other minerals, and if said operations result in the production of said minerals, then for as long thereafter as oil, gas or other minerals are produced from said lands, or from lands pooled or unitized therewith. A shut-in gas well shall be considered as a producing well and shall perpetuate the term of this conveyance.

The royalty interests and rights herein sold, transferred and conveyed are:

(a) 3/340th of 1/8th of the whole of any oil, gas or other minerals, except sulphur, on and under and to be produced from said lands; delivery of said royalties to be made to the purchaser herein in the same manner as is provided for the delivery of royalties by any present or future mineral lease affecting said lands.

(b) Proportionate part of cents per long ton for all sulphur produced from said lands, payments therefor to be made monthly for sulphur marketed.

This sale and transfer is made and accepted subject to any oil, gas and mineral lease now affecting said lands, but the royalties hereinabove described shall be delivered and/or paid to the purchaser out of and deducted from the royalties reserved to the lessor in any such lease. This sale and transfer, however, is not limited to royalties accruing under any lease presently affecting said lands, but the rights herein granted are and shall remain a charge and burden on the land herein described and binding on any future owners or lessees of said lands and, in the event of the termination of any present lease, the said royalties shall be delivered and/or paid out of the whole of any oil, gas or other minerals produced from said lands by the owner, lessee or anyone else operating thereon.

The grantor herein reserves the right to grant future leases affecting said lands so long as there shall be included therein, for the benefit of the grantee herein, the royalty rights herein conveyed; and the grantor further reserves the right to collect and retain all bonuses and rentals paid for or in connection with any future lease or accruing under the lease now outstanding.

TO HAVE AND TO HOLD said royalty rights unto the said purchaser, for the term above stated, and the said grantor hereby agrees to warrant and forever defend said rights unto the said purchaser against any person whomsoever lawfully claiming or to claim the same.

WITNESS the signature of grantor, this the 25th day of February, 1980

Emily Fairchild

WITNESSES:

Billy Riley

JOINT OR SINGLE ACKNOWLEDGMENT
(MISSISSIPPI-ALABAMA-FLORIDA)

STATE OF Mississippi

COUNTY OF Forrest

I hereby certify, that on this day, before me, a NOTARY PUBLIC duly authorized in the state and county aforesaid to take acknowledgments, personally appeared WILEY FAIRCHILD to me known to be the person ___ described in and who executed the foregoing instrument and ___ he acknowledged before me that, being informed of the contents of the same, ___ he ___ voluntarily signed and delivered the above and foregoing instrument on the day and year therein mentioned.

Given under my hand and official seal, this 25th day of February A.D. 19 80

(Affix Seal)

Lynnette F. Smith
Notary Public
(Title of Official)

My Commission expires 12-27-82 in and for Forrest County, Miss.

WITNESS ACKNOWLEDGMENT
(MISSISSIPPI-ALABAMA-FLORIDA)

STATE OF ___

COUNTY OF ___

I, a ___ in and for the aforesaid jurisdiction, hereby certify that ___ a subscribing witness to the foregoing instrument, known to me, appeared before me on this day, and being sworn, stated that ___ the grantor(s), having been informed of the contents thereof, voluntarily executed and delivered the same in his presence, and in the presence of the other subscribing witness, on the day the same bears date; that he attested the same in the presence of the grantor(s), and of the other witness, and that such other witness subscribed his name as a witness in his presence.

___
(Subscribing Witness)

Given under my hand and official seal, this ___ day of ___ 19___

(Affix Seal)

___
(Title of Official)

My commission expires ___ in and for ___ County, ___

---

ROYALTY DEED

FROM

TO

2139

Dated ___ 19___

County of Marion

State of Miss

This instrument was filed for record on the 6 day of April 19 81 at 11:30 o'clock AM and duly recorded in Book 836 Page 258 of the MD records of this office.

Cody M. Buckley
Chancery Clerk

By Barbara Boyd Deputy

When recorded return to

" " "

GOVERNMENT
EXHIBIT
14

Form M-187 Rev. 11/74
Mississippi-Alabama-Florida

PRINTED AND FOR SALE BY HEDERMAN BROS. JACKSON, MISS.

# OVERRIDING
# ROYALTY DEED

## (Term)

*Know All Men By These Presents:*

That FAIRCHILD-WINDHAM EXPLORATION COMPANY for and in consideration of the price and sum of ----- TEN ----- ($10.00) Dollars and other valuable considerations, cash in hand paid by WALTER L. NIXON, JR.,

hereinafter referred to as grantee, has granted, bargained, sold and conveyed, and does by these presents grant, bargain, sell and convey, unto the said grantee the mineral royalty interest hereinafter set out affecting and relating to the following described lands in the County of Covington State of Mississippi to-wit:

TOWNSHIP 7 NORTH, RANGE 17 WEST

Section 2: N 1/2 of NE 1/4 and SE 1/4 of NE 1/4; and
N 1/2 of NE 1/4 of SE 1/4

IT IS THE INTENT OF THE GRANTOR TO CONVEY AN INTEREST TO A DEPTH OF 100 FEET BELOW THE DEPTH OF ANY WELL NOW BEING DRILLED OR CURRENTLY IN PRODUCTION ON SAID ACREAGE.

IT IS THE INTENT OF THE GRANTOR TO CONVEY FIVE (5) FULL OVERRIDING ROYALTY ACRES.

THIS CONVEYANCE IS TO BE EFFECTIVE FROM THE FIRST DAY OF PRODUCTION.

This conveyance shall be for a period of TWO years from date hereof and as long thereafter as oil, gas or other minerals are produced from said lands, or from lands with which said lands are pooled or unitized, and also as long thereafter as drilling or reworking operations are being conducted on said lands or on lands pooled or unitized therewith, without more than 90 days cessation of operations, in an effort to produce oil, gas or other minerals, and if said operations result in the production of said minerals, then for as long thereafter as oil, gas or other minerals are produced from said lands or from lands pooled or unitized therewith. A shut-in gas well shall be considered as a producing well and shall perpetuate the term of this conveyance.

The royalty interests and rights herein sold, transferred and conveyed are:

(a) 5/140th of 1/8th of the whole of any oil, gas or other minerals, except sulphur, on and under and to be produced from said lands, delivery of said royalties to be made to the purchaser herein in the same manner as is provided for the delivery of royalties by any present or future mineral lease affecting said lands.

(b) Proportionate part of cents per long ton for all sulphur produced from said lands, payments therefor to be made monthly for sulphur marketed.

This sale and transfer is made and accepted subject to any oil, gas and mineral lease now affecting said lands, but the royalties hereinabove described shall be delivered and/or paid to the purchaser out of and deducted from the royalties reserved to the lessor in any such lease. This sale and transfer, however, is not limited to royalties accruing under any lease presently affecting said lands, but the rights herein granted are and shall remain a charge and burden on the land herein described and binding on any future owners or lessees of said lands and in the event of the termination of any present lease, the said royalties shall be delivered and/or paid out of the whole of any oil, gas or other minerals produced from said lands by the owner, lessee or anyone else operating thereon.

The grantor herein reserves the right to grant future leases affecting said lands so long as there shall be included therein, for the benefit of the grantee herein, the royalty rights herein conveyed, and the grantor further reserves the right to collect and retain all bonuses and rentals paid for or in connection with any future lease or accruing under the lease now outstanding.

TO HAVE AND TO HOLD said royalty rights unto the said purchaser for the term above stated, and the said grantor hereby agrees to warrant and forever defend said rights unto the said purchaser against any person whomsoever lawfully claiming or to claim the same.

WITNESS the signature of grantor, this the 25th day of February 1980

Wiley Fairchild

WITNESSES

Book 125

JOINT OR SINGLE ACKNOWLEDGMENT
(MISSISSIPPI-ALABAMA-FLORIDA)

STATE OF Mississippi
COUNTY OF Forrest

I hereby certify, that on this day, before me, a NOTARY PUBLIC [illegible]

WILEY FAIRCHILD

[illegible]

[illegible] 25th day of February 19 80

Lynnette J. Smith
Notary Public
(Title of Official)

My commission expires 12-27-82 in and for Forrest County Miss.

WITNESS ACKNOWLEDGMENT
(MISSISSIPPI-ALABAMA-FLORIDA)

STATE OF
COUNTY OF

I, a [illegible]

[illegible]

(Subscribing Witness)

[illegible] day of 19

(Affix Seal)

(Title of Official)

My commission expires [illegible] County

MINERAL DOCUMENTARY TAX

MINERAL DOCUMENTARY TAX

## ROYALTY DEED

FROM

TO

Dated April 6 19 81
County of Covington
State of Miss.

This instrument was filed for record on the 6th day of April 19 81 at 11.30 o'clock AM and duly recorded in Book 125 Page 566 of the O/R records of this office

Lynn Mayfield County Clerk
By Susan Kaaby Deputy

When recorded return to

[illegible] Mississippi Alabama Florida

CERTIFIED a true copy of original instrument now on record in my office. This the 3rd day of January 1986.

Lynn Mayfield
CHANCERY CLERK
Covington County, Miss.

[illegible] Brazier DC

COMMITTEE EXHIBIT NO. 5

## NEGOTIABLE PROMISSORY NOTE

STATE OF MISSISSIPPI
COUNTY OF

For value received, the undersigned, WALTER L. NIXON, JR., hereby unconditionally promises to pay to the order of W. R. FAIRCHILD CONSTRUCTION CO., LTD., Post Office Box 1857, Hattiesburg, Mississippi, 39401, in lawful money of the United States of America, the principal sum of Three Thousand Dollars ($3,000.00), together with simple interest on the unpaid balance thereof at the rate of ten percent (10%) per annum from and after date hereof, due and payable three (3) years from the date hereof, which due date shall be February 25, 1983.

The undersigned maker hereby agrees that upon the nonpayment at any maturity of any of the obligations or liabilities hereof, or upon the suspension, failure or insolvency, or upon any application for the adjudication of bankruptcy of any party hereto, or upon the application by or against any party hereto for a respite, assignment, or receivership, then and in any such case, this note and all the obligations and liabilities hereof shall forthwith mature and become immediately due and payable, without demand or notice, anything to the contrary notwithstanding.

The undersigned maker hereby further agrees to pay the fees of an attorney at law who, owing to default in the payment of any sum due hereunder or in the performance of any other terms or conditions hereof, may be employed to recover the amount hereof, or any part thereof, in principal or interest, or to protect the interest of the holders hereof, or to compromise, or to take other action in regard hereto, which fees shall in no event be less than fifteen percent (15%) of the amount then owing and sought to be collected, protected or preserved.

All parties hereto severally waive presentment for payment, demand, notice of nonpayment, protest, and notice of protest, and agree that the payment hereof may be extended from time to time, one or more times, without notice and without prejudice to the rights of the holders hereunder.

All parties hereto recognize that time is of the essence of this obligation and the undersigned maker hereby agrees that any sum delinquent hereunder or under any security instrument securing this obligation shall bear interest at the highest lawful rate permitted by the laws of the State of Mississippi.

The undersigned maker hereby reserves the right to prepay at any time, without penalty, all or any part of the indebtedness hereby evidenced. Any such prepayment shall not affect the principal amount then due.

This instrument is to be governed by and construed under the laws of the State of Mississippi.

Witness execution hereof on this, the 25th day of February, 1980.

Walter L. Nixon Jr.
WALTER L. NIXON, JR.

PAID

Paid in full
3/7/83
W.R. Fairchild Construction Co. Ltd
by RL Jarvis, Jr

## NEGOTIABLE PROMISSORY NOTE

STATE OF MISSISSIPPI
COUNTY OF

For value received, the undersigned, WALTER L. NIXON, JR., hereby unconditionally promises to pay to the order of W. R. FAIRCHILD CONSTRUCTION CO., LTD., Post Office Box 1857, Hattiesburg, Mississippi, 39401, in lawful money of the United States of America, the principal sum of Four Thousand Five Hundred and No/100 Dollars ($4,500.00), together with simple interest on the unpaid balance thereof at the rate of ten percent (10%) per annum from and after date hereof, due and payable three (3) years from the date hereof, which due date shall be February 25, 1983.

The undersigned maker hereby agrees that upon the nonpayment at any maturity of any of the obligations or liabilities hereof, or upon the suspension, failure or insolvency, or upon any application for the adjudication of bankruptcy of any party hereto, or upon the application by or against any party hereto for a respite, assignment, or receivership, then and in any such case this note and all the obligations and liabilities hereof shall forthwith mature and become immediately due and payable, without demand or notice, anything to the contrary herein notwithstanding.

The undersigned maker hereby further agrees to pay the fees of an attorney at law who, owing to default in the payment of any sum due hereunder or in the performance of any other terms or conditions hereof, may be employed to recover the amount hereof, or any part thereof, in principal or interest, or to protect the interest of the holders hereof, or to compromise, or to take other action in regard hereto, which fees shall in no event be less than fifteen percent (15%) of the amount then owing and sought to be collected, protected or preserved.

All parties hereto severally waive presentment for payment, demand, notice of nonpayment, protest, and notice of protest, and agree that the payment hereof may be extended from time to time, one or more times, without notice and without prejudice to the rights of the holders hereunder.

PAID

All parties hereto recognize that time is of the essence of this obligation and the undersigned maker hereby agrees that any sum delinquent hereunder or under any security instrument securing this obligation shall bear interest at the highest lawful rate permitted by the laws of the State of Mississippi.

The undersigned maker hereby reserves the right to prepay at any time, without penalty, all or any part of the indebtedness hereby evidenced. Any such prepayment shall not affect the principal amount then due.

This instrument is to be governed by and construed under the laws of the State of Mississippi.

Witness execution hereof on this, the 25th day of February, 1980.

Walter L. Nixon J
WALTER L. NIXON, JR.

Paid in full
3/7/83
WR Fairchild Construction Co.
by RL Jarvis, J

# NEGOTIABLE PROMISSORY NOTE

STATE OF MISSISSIPPI
COUNTY OF

For value received, the undersigned, WALTER L. NIXON, JR., hereby unconditionally promises to pay to the order of W. R. FAIRCHILD CONSTRUCTION CO., LTD., Post Office Box 1857, Hattiesburg, Mississippi, 39401, in lawful money of the United States of America, the principal sum of Two Thousand Dollars ($2,000.00), together with simple interest on the unpaid balance thereof at the rate of ten percent (10%) per annum from and after date hereof, due and payable three (3) years from the date hereof, which due date shall be February 25, 1983.

The undersigned maker hereby agrees that upon the nonpayment at any maturity of any of the obligations or liabilities hereof, or upon the suspension, failure or insolvency, or upon any application for the adjudication of bankruptcy of any party hereto, or upon the application by or against any party hereto for a respite, assignment, or receivership, then and in any such case, this note and all the obligations and liabilities hereof shall forthwith mature and become immediately due and payable, without demand or notice, anything to the contrary notwithstanding.

The undersigned maker hereby further agrees to pay the fees of an attorney at law who, owing to default in the payment of any sum due hereunder or in the performance of any other terms or conditions hereof, may be employed to recover the amount hereof, or any part thereof, in principal or interest, or to protect the interest of the holders hereof, or to compromise, or to take other action in regard hereto, which fees shall in no event be less than fifteen percent (15%) of the amount then owing and sought to be collected, protected or preserved.

PAID

All parties hereto severally waive presentment for payment, demand, notice of nonpayment, protest, and notice of protest, and agree that the payment hereof may be extended from time to time, one or more times, without notice and without prejudice to the rights of the holders hereunder.

All parties hereto recognize that time is of the essence of this obligation and the undersigned maker hereby agrees that any sum delinquent hereunder or under any security instrument securing this obligation shall bear interest at the highest lawful rate permitted by the laws of the State of Mississippi.

The undersigned maker hereby reserves the right to prepay at any time, without penalty, all or any part of the indebtedness hereby evidenced. Any such prepayment shall not affect the principal amount then due.

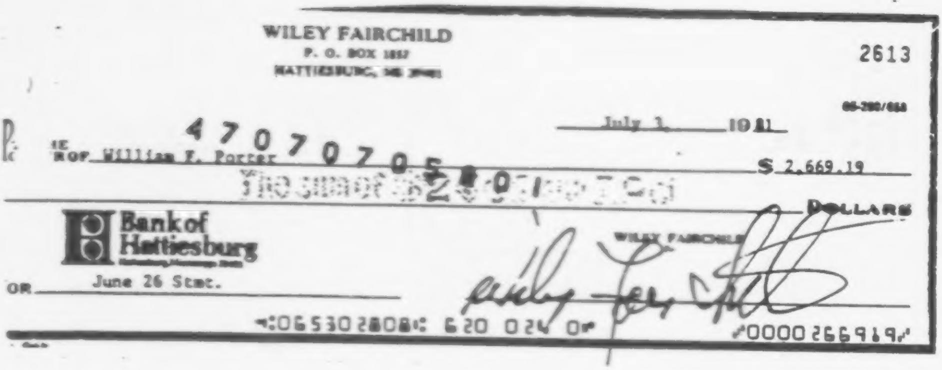
This instrument is to be governed by and construed under the laws of the State of Mississippi.

Witness execution hereof on this, the 25th day of February, 1980.

Walter L. Nixon Jr.
WALTER L. NIXON, JR.

Paid in full
9/16/82
W.R. Fairchild Construction Co
by RL Jarvis

COMMITTEE EXHIBIT NO. 6



**WILEY FAIRCHILD**
P. O. BOX 1857
HATTIESBURG, MS [illegible]

2613

[illegible]

July 1, 1981

4707070580

OF William F. Porter $ 2,669.19

The sum of [illegible]

DOLLARS

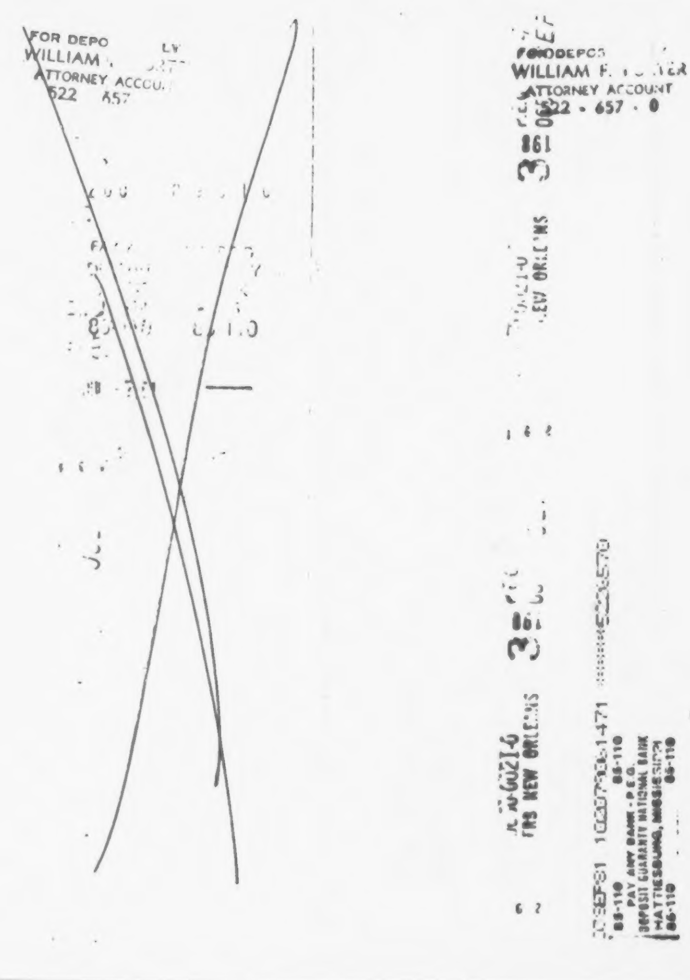
Bank of Hattiesburg

OR June 26 Stmt.

WILEY FAIRCHILD

⑆065302808⑆ 620 024 0⑈ ⑈0000266919⑈

DEFENDANT'S EXHIBIT 2

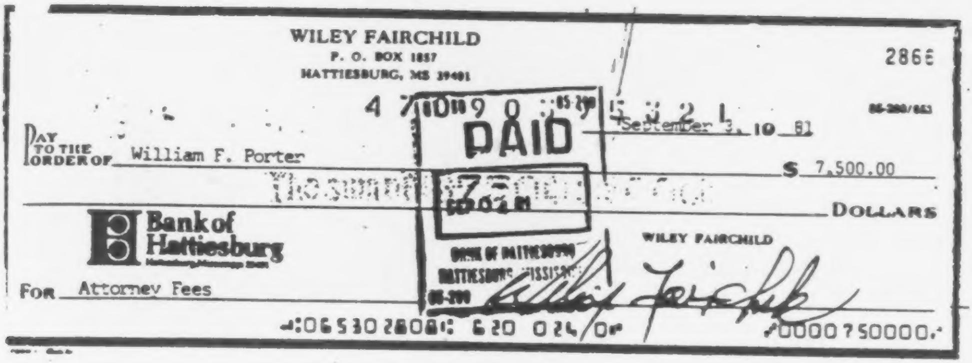


FOR DEPO
WILLIAM
ATTORNEY ACCOU
522 657

FOR DEPOS
WILLIAM F.
ATTORNEY ACCOUNT
522 - 657 - 0

FRB NEW ORLEANS

85-110
PAY ANY BANK - P.E.G.
DEPOSIT GUARANTY NATIONAL BANK
HATTIESBURG, MISSISSIPPI
85-110



WILEY FAIRCHILD
P. O. BOX 1857
HATTIESBURG, MS 39401

2866

4 7 [illegible] 9 0 [illegible] 5 3 2 1

85-200/653

September 3, 19 81

PAY TO THE ORDER OF William F. Porter $ 7,500.00

[illegible] DOLLARS

PAID
SEP 02 81
BANK OF HATTIESBURG
HATTIESBURG, MISSISSIPPI
85-200

Bank of Hattiesburg

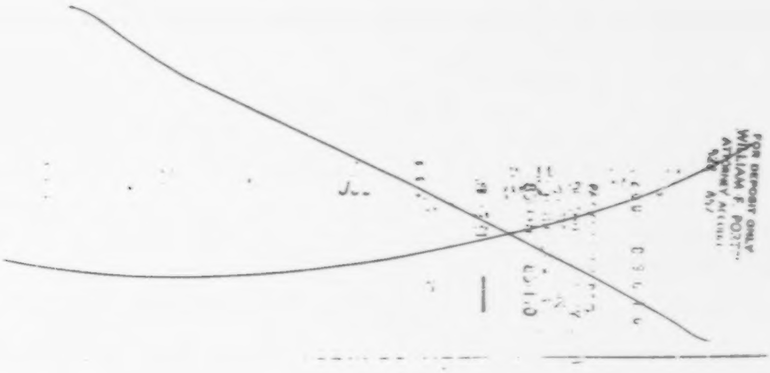
WILEY FAIRCHILD

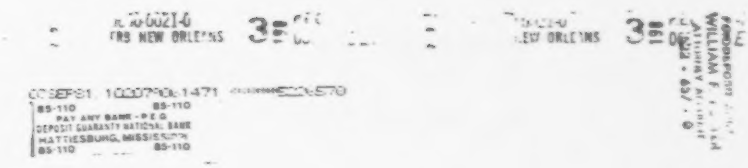
FOR Attorney Fees

Wiley Fairchild

⑆065302808⑆ 620 024 0⑈ ⑈0000750000⑈

[illegible]
3


FOR DEPOSIT ONLY
WILLIAM F. PORT
ATTORNEY AT LAW


FRB NEW ORLEANS

NEW ORLEANS

FOR DEPOSIT ONLY
WILLIAM F.
ATTORNEY AT LAW

SEP81 1000790 1471

85-110 85-110
PAY ANY BANK - P E G
DEPOSIT GUARANTY NATIONAL BANK
HATTIESBURG, MISSISSIPPI
85-110 85-110

COMMITTEE EXHIBIT NO. 7

# THE STATE OF MISSISSIPPI, FORREST COUNTY

CIRCUIT COURT, July TERM, 19 81

The Grand Jurors for the State of Mississippi, elected, impanelled, sworn and charged, in and for Forrest County, State aforesaid, in the name and by the authority of the said State of Mississippi, upon their oath, present: that Redditt Andrew Fairchild and Robert L. Watkins, In conjunctio with each other beginning on the 27th day of July, 1980 and continuously 19__, until August 4, 1980 in Forrest County aforesaid:

did willfully, unlawfully, and feloniously conspire and agree together to commit a crime, to-wit: possession of more than one (1) kilogram of marijuana with the intent to deliver the same to individuals unknown, contrary to and in violation of the Uniform Controlled Substances Act, as amended,

STATE OF MISSISSIPPI
COUNTY OF FORREST
I, MARIAN BROWN, Circuit Clerk of Forrest County, do hereby certify that the foregoing is a true and correct copy of [illegible]
as the same appears on record in my office in Book 2
Page [illegible]
Given under My hand and official seal on this 15 day of [illegible], 19 85
Marian Brown
Circuit Clerk
D. [illegible] D.C.

against the peace and dignity of the State of Mississippi.

Foreman of the Grand Jury.

District Attorney.

No. 10,041

**Forrest County, Mississippi**

**THE STATE OF MISSISSIPPI**

vs.

Redditt Andrew Fairchild and
Robert L. Watkins, in conjunct
with each other

**CHARGE**

Conspiracy

**A TRUE BILL:**

J H Mc C[illegible]
Foreman of the Grand Jury

**WITNESSES**

Filed August 26 1981

Marian Brown
Circuit Clerk

By Helen McBride D.C.

No. 10,041

Forrest County, Mississippi

THE STATE OF MISSISSIPPI

vs.

Redditt Andrew Fairchild and
Robert L. Watkins, in conjunction
with each other

CHARGE

Conspiracy

A TRUE BILL:

J H McCann
Foreman of the Grand Jury

WITNESSES

Filed August 26, 19 81

Doris Brown
Circuit Clerk

By Helen McBride D.C.

COMMITTEE EXHIBIT NO. 8

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

JANUARY TERM 19 82

FILED
JAN 12 1982
Marian Brown
CIRCUIT CLERK

STATE OF MISSISSIPPI

VS.

CAUSE NO. 10,041

REDDITT ANDREW FAIRCHILD, DEFENDANT

## ENTRY OF GUILTY PLEA

This day into open Court came the District Attorney who prosecutes for the State of Mississippi and came also Redditt Andrew Fairchild, in his own proper person and represented by counsel, Hon. William F. Porter and was lawfully arraigned upon an Indictment lawfully returned by the Grand Jury of Forrest County, Mississippi, charging the d Defendant with the crime of conspiracy, and being duly advised of all his Constitutional rights in the premises and being further advised of the consequences of such a plea, the Defendant did then and there in open Court, after first being duly qualified, enter his plea of guilty to said charge, which plea is accepted by the Court.

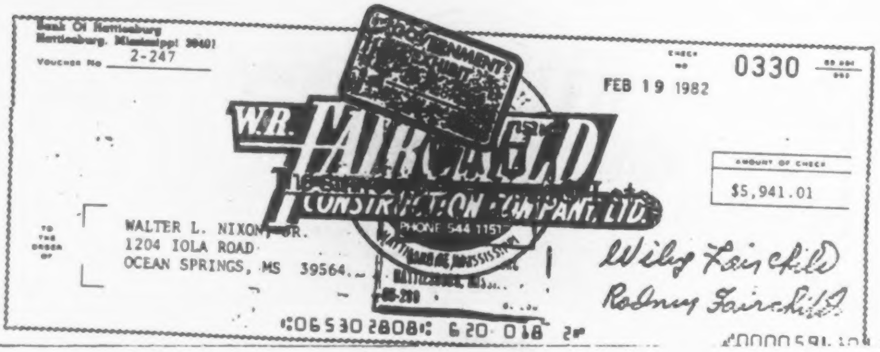
Sentence is hereby deferred to the 19th day of March, A. D., 19 82.

SO ORDERED AND ADJUDGED on this the 12th day of January, A. D., 19 82.

CIRCUIT JUDGE

⑤

COMMITTEE EXHIBIT NO. 9



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 2-247

Check No 0330
FEB 19 1982

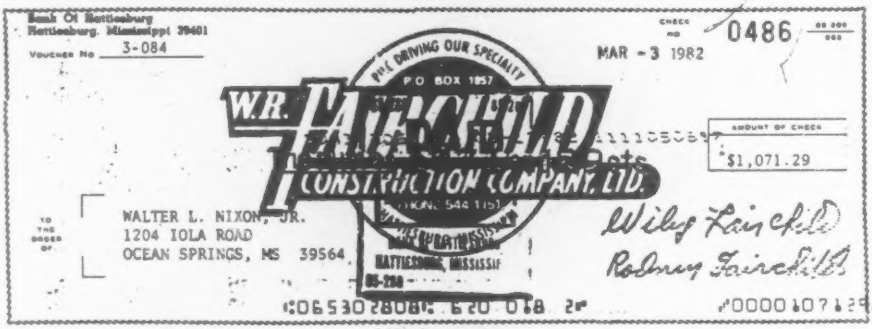
Amount of Check
$5,941.01

To the Order of
WALTER L. NIXON, JR.
1204 IOLA ROAD
OCEAN SPRINGS, MS 39564

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PHONE 544 1151
HATTIESBURG, MISSISSIPPI

Wiley Fairchild
Rodney Fairchild

06530 2808 620 018 2



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 3-084

Check No 0486
MAR -3 1982

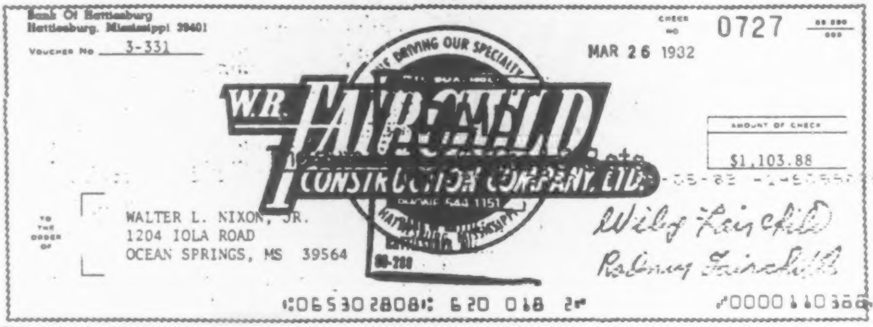
Amount of Check
$1,071.29

To the Order of
WALTER L. NIXON, JR.
1204 IOLA ROAD
OCEAN SPRINGS, MS 39564

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
PHONE 544 1151
HATTIESBURG, MISSISSIPPI

Wiley Fairchild
Rodney Fairchild

06530 2808 620 018 2 0000107129



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 3-331

Check No 0727
MAR 26 1982

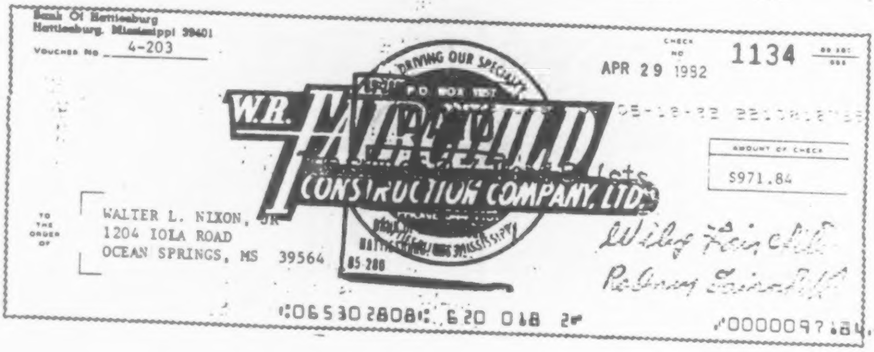
Amount of Check
$1,103.88

To the Order of
WALTER L. NIXON, JR.
1204 IOLA ROAD
OCEAN SPRINGS, MS 39564

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
PHONE 544 1151
HATTIESBURG, MISSISSIPPI

Wiley Fairchild
Rodney Fairchild

06530 2808 620 018 2 0000110388



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 4-203

Check No 1134
APR 29 1982

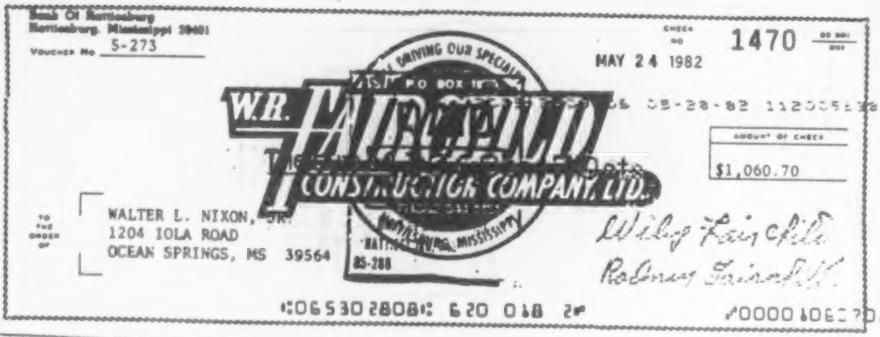
Amount of Check
$971.84

To the Order of
WALTER L. NIXON, JR.
1204 IOLA ROAD
OCEAN SPRINGS, MS 39564

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
HATTIESBURG, MISSISSIPPI

Wiley Fairchild
Rodney Fairchild

06530 2808 620 018 2 0000097184


Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 5-273

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
HATTIESBURG, MISSISSIPPI

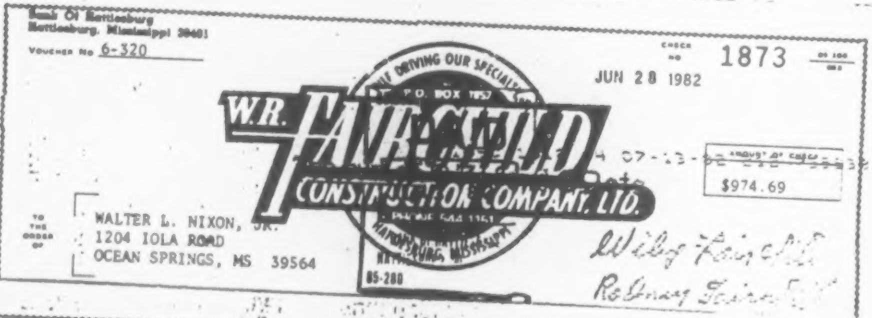
CHECK NO 1470
MAY 24 1982

AMOUNT OF CHECK
$1,060.70

TO THE ORDER OF
WALTER L. NIXON, JR.
1204 IOLA ROAD
OCEAN SPRINGS, MS 39564

Wiley Fairchild
Rodney Fairchild

⑆065302808⑆ 620 018 2⑈ ⑈0000106070⑈


Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 6-320

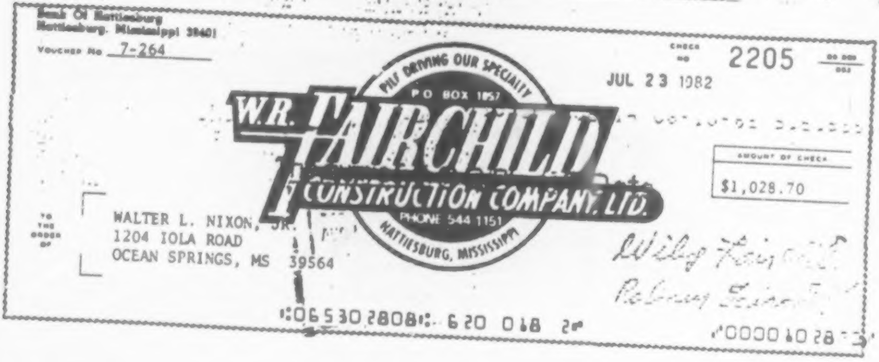
W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
PHONE 544 1151
HATTIESBURG, MISSISSIPPI

CHECK NO 1873
JUN 28 1982

AMOUNT OF CHECK
$974.69

TO THE ORDER OF
WALTER L. NIXON, JR.
1204 IOLA ROAD
OCEAN SPRINGS, MS 39564

Wiley Fairchild
Rodney Fairchild


Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 7-264

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
PHONE 544 1151
HATTIESBURG, MISSISSIPPI

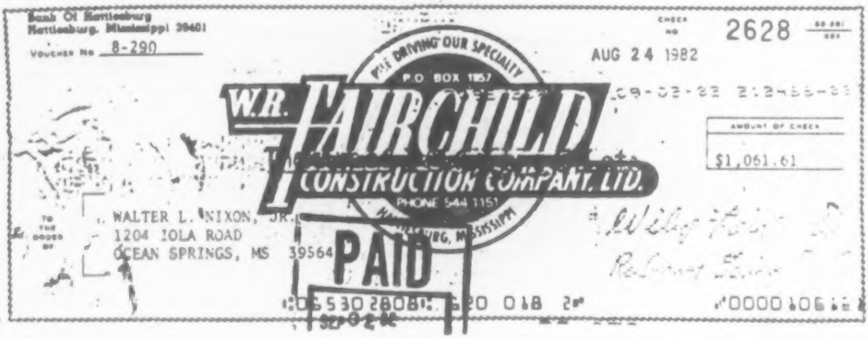
CHECK NO 2205
JUL 23 1982

AMOUNT OF CHECK
$1,028.70

TO THE ORDER OF
WALTER L. NIXON, JR.
1204 IOLA ROAD
OCEAN SPRINGS, MS 39564

Wiley Fairchild
Rodney Fairchild

⑆065302808⑆ 620 018 2⑈ ⑈0000102870⑈


Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 8-290

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
PHONE 544 1151
HATTIESBURG, MISSISSIPPI

CHECK NO 2628
AUG 24 1982

AMOUNT OF CHECK
$1,061.61

TO THE ORDER OF
WALTER L. NIXON, JR.
1204 IOLA ROAD
OCEAN SPRINGS, MS 39564

PAID

Wiley Fairchild
Rodney Fairchild

⑆065302808⑆ 620 018 2⑈ ⑈0000106161⑈

For Deposit Only
Peoples Bank of Biloxi
Walter L Nixon, JR.
007-827-2

55043

THE PEOPLES
BANK OF BILOXI
BILOXI, MISSISSIPPI
85-75

---

For Deposit On
Walter L Nixon JR
Spec Acct
Peoples Bank of Biloxi
007-827-2

3333 12993

BANK OF BILOXI
MISSISSIPPI
85-75

---

For Deposit Only
Peoples Bank of Biloxi
007-827-2
Walter L Nixon, JR
Spec Acct

57986

85-75

---

**For Deposit Only**
**WALTER L. NIXON, JR.**
Peoples Bank of Biloxi
007-827-2

65336

BILOXI
MISSISSIPPI
85-75

or Deposit Only
**WALTER L. NIXON, JR.**
Peoples Bank of Biloxi
007-827-0
Spec Acct
4444 59439

PAY ANY BANK P.E.G.
THE PEOPLES
BANK OF BILOXI
85-75 85-75
SEP 29 82

---

For Deposit Only
**WALTER L. NIXON, JR.**
Peoples Bank of Biloxi
007-827-2
2222 10619

PAY ANY BANK, P.E.G.
THE PEOPLES
BANK OF BILOXI
BILOXI, MISS
85-75 85-75
82

---

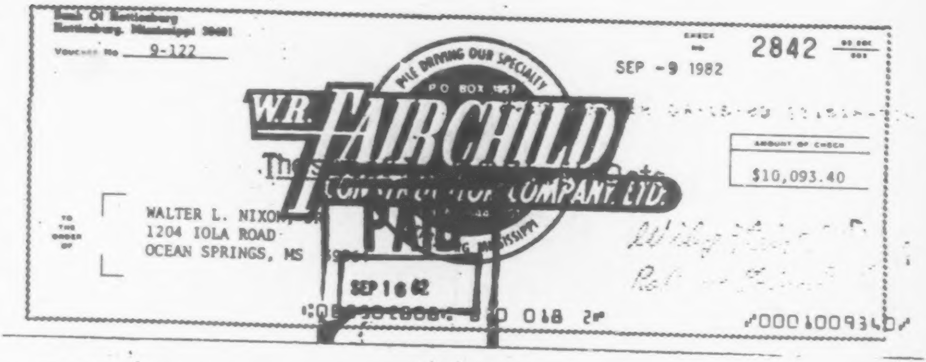
For Deposit Only
**WALTER L. NIXON, JR.**
eoples Bank of Biloxi
007-827-2
2222

82

---

For Dep
**WALTER L. NIXON, JR.**
Peoples Bank of Biloxi
# 007-827-2
1111 15009

PAY ANY BANK P.E.G.
85-75 85-75
SEP -1 82



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 9-122

Check No 2842

SEP -9 1982

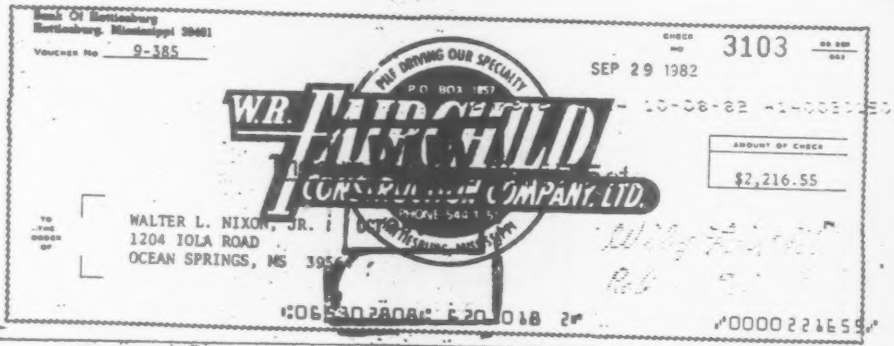
W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857

Amount of Check
$10,093.40

To the order of
WALTER L. NIXON, JR.
1204 IOLA ROAD
OCEAN SPRINGS, MS

PAID
SEP 16 82

065302808: 620 018 2
0001009340



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 9-385

Check No 3103

SEP 29 1982

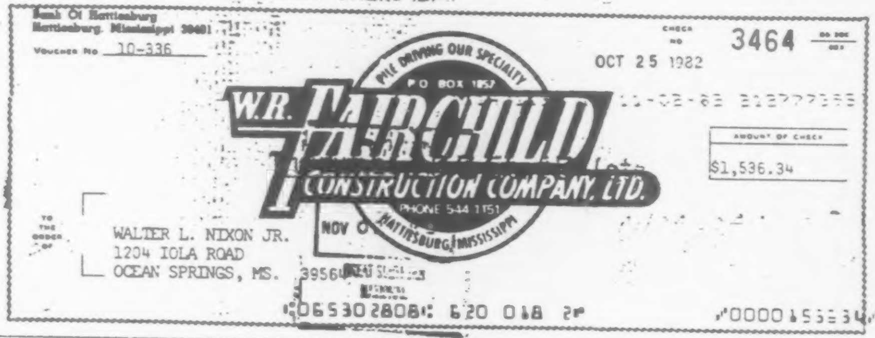
W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
PHONE 544 1151
HATTIESBURG, MISSISSIPPI

10-08-82

Amount of Check
$2,216.55

To the order of
WALTER L. NIXON, JR.
1204 IOLA ROAD
OCEAN SPRINGS, MS 39564

065302808: 620 018 2
0000221655



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 10-336

Check No 3464

OCT 25 1982

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
PHONE 544 1151
HATTIESBURG, MISSISSIPPI

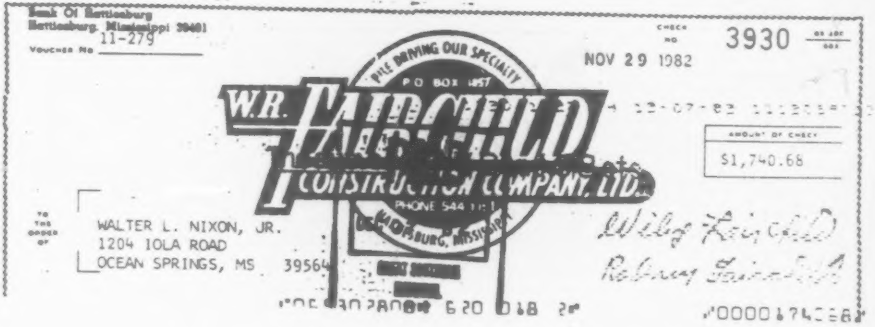
11-02-82

Amount of Check
$1,536.34

To the order of
WALTER L. NIXON JR.
1204 IOLA ROAD
OCEAN SPRINGS, MS. 39564

NOV

065302808: 620 018 2
0000153634



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 11-279

Check No 3930

NOV 29 1982

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
PHONE 544 1151
HATTIESBURG, MISSISSIPPI

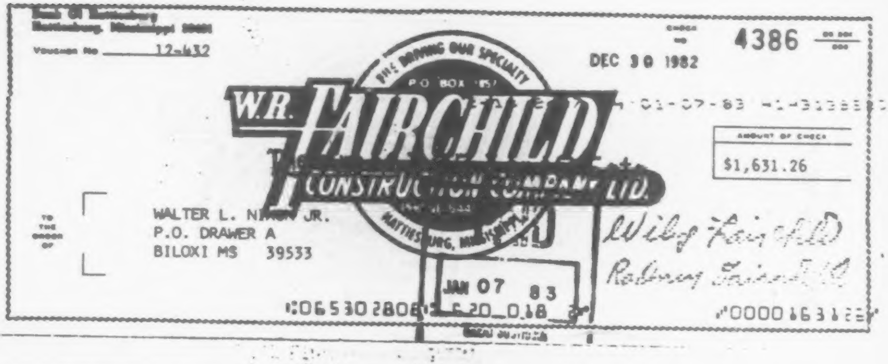
12-07-82

Amount of Check
$1,740.68

To the order of
WALTER L. NIXON, JR.
1204 IOLA ROAD
OCEAN SPRINGS, MS 39564

Wiley Fairchild

065302808: 620 018 2
0000174068



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401

Voucher No. 12-432

Check No. 4386

DEC 30 1982

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
HATTIESBURG, MISSISSIPPI

01-07-83

Amount of Check
$1,631.26

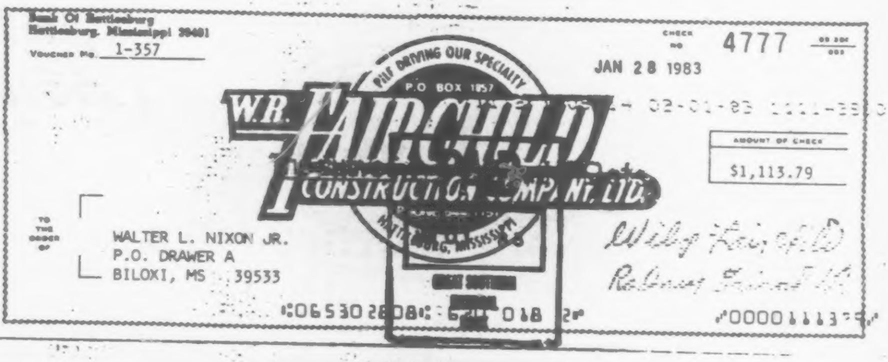
To the order of
WALTER L. NIXON JR.
P.O. DRAWER A
BILOXI MS 39533

Wiley Fairchild
Rodney Fairchild

JAN 07 83

:065302808: 620 018 2"

"0000163126"



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401

Voucher No. 1-357

Check No. 4777

JAN 28 1983

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
PHONE 544 1151
HATTIESBURG, MISSISSIPPI

02-01-83

Amount of Check
$1,113.79

To the order of
WALTER L. NIXON JR.
P.O. DRAWER A
BILOXI, MS 39533

Wiley Fairchild
Rodney Fairchild

GREAT SOUTHERN NATIONAL BANK

:065302808: 620 018 2"

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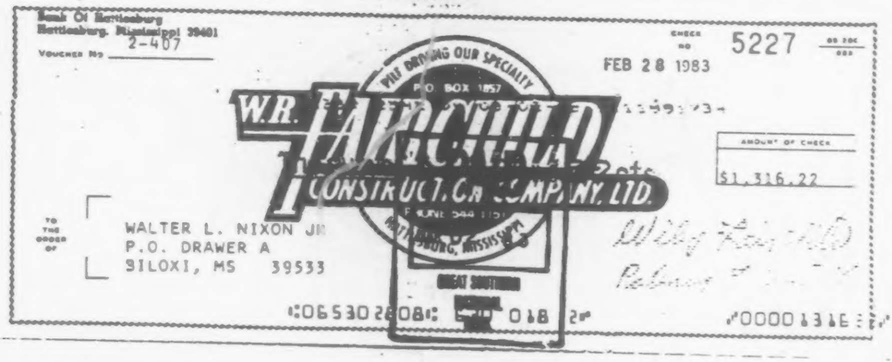

Bank Of Hattiesburg
Hattiesburg, Mississippi 39401

Voucher No. 2-407

Check No. 5227

FEB 28 1983

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
PHONE 544 1151
HATTIESBURG, MISSISSIPPI

Amount of Check
$1,316.22

To the order of
WALTER L. NIXON JR
P.O. DRAWER A
BILOXI, MS 39533

Wiley Fairchild
Rodney Fairchild

GREAT SOUTHERN NATIONAL BANK

:065302808: 620 018 2"

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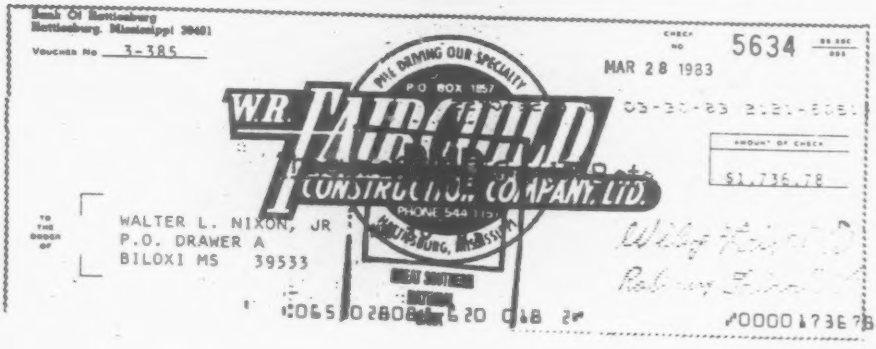

Bank Of Hattiesburg
Hattiesburg, Mississippi 39401

Voucher No. 3-385

Check No. 5634

MAR 28 1983

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
PHONE 544 1151
HATTIESBURG, MISSISSIPPI

03-30-83

Amount of Check
$1,736.78

To the order of
WALTER L. NIXON, JR
P.O. DRAWER A
BILOXI MS 39533

Wiley Fairchild
Rodney Fairchild

GREAT SOUTHERN NATIONAL BANK

:065302808: 620 018 2"

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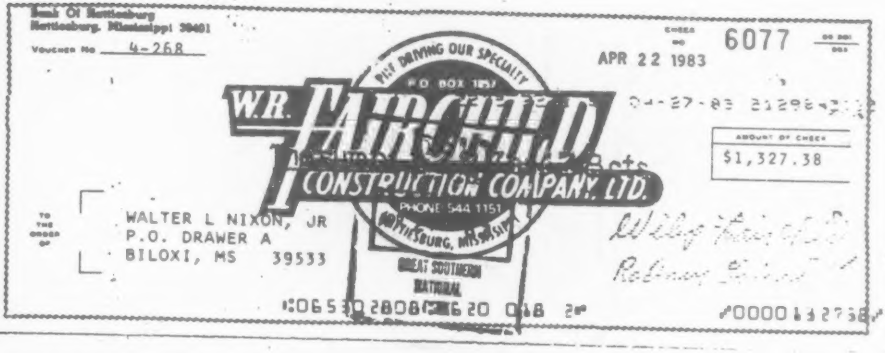
Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 4-268

CHECK NO 6077

APR 22 1983

04-27-83 21298

AMOUNT OF CHECK
$1,327.38

TO THE ORDER OF
WALTER L NIXON, JR
P.O. DRAWER A
BILOXI, MS 39533

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
PHONE 544 1151
HATTIESBURG, MISSISSIPPI

GREAT SOUTHERN NATIONAL

Wiley Fairchild
Rodney Fairchild

⑆065302808⑆ 620 018 2⑈ ⑈0000132738⑈

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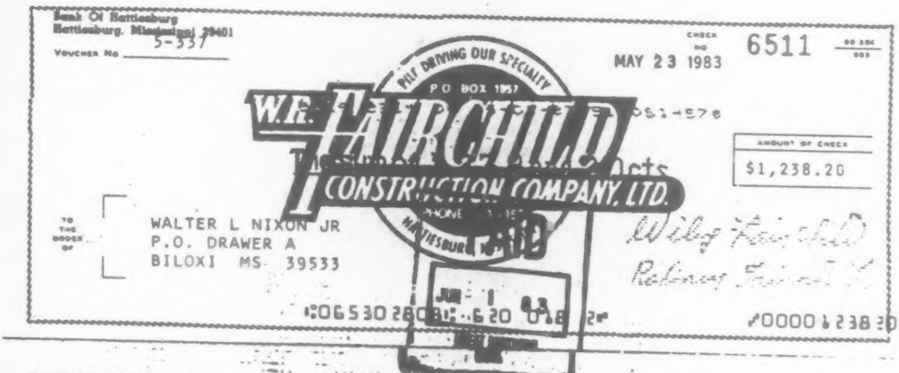
Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 5-337

CHECK NO 6511

MAY 23 1983

AMOUNT OF CHECK
$1,238.20

TO THE ORDER OF
WALTER L NIXON JR
P.O. DRAWER A
BILOXI MS 39533

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
HATTIESBURG

JUN 1 83

Wiley Fairchild
Rodney Fairchild

⑆065302808⑆ 620 018 2⑈ ⑈0000123820⑈

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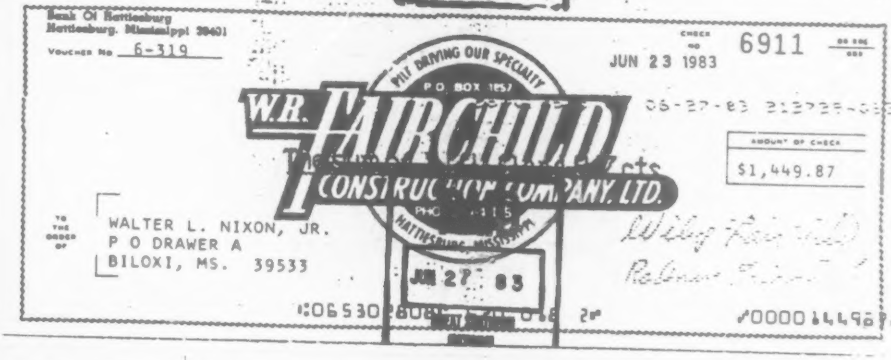
Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 6-319

CHECK NO 6911

JUN 23 1983

06-27-83 21372

AMOUNT OF CHECK
$1,449.87

TO THE ORDER OF
WALTER L. NIXON, JR.
P O DRAWER A
BILOXI, MS. 39533

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
HATTIESBURG, MISSISSIPPI

JUN 27 83

GREAT SOUTHERN

Wiley Fairchild
Rodney Fairchild

⑆065302808⑆ 620 018 2⑈ ⑈0000144987⑈

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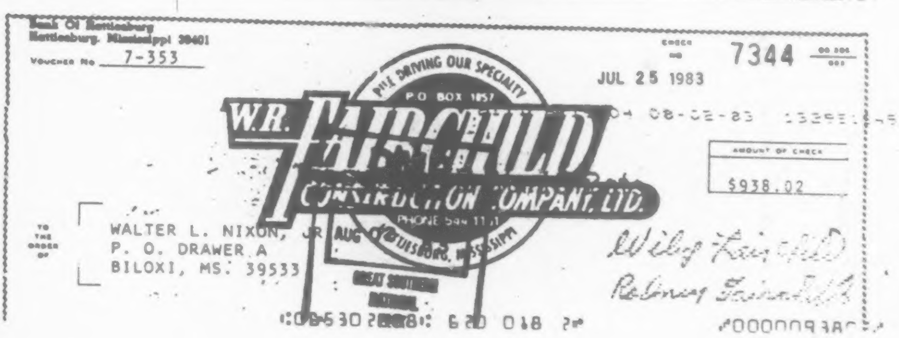

Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 7-353

CHECK NO 7344

JUL 25 1983

04 08-02-83

AMOUNT OF CHECK
$938.02

TO THE ORDER OF
WALTER L. NIXON, JR
P. O. DRAWER A
BILOXI, MS. 39533

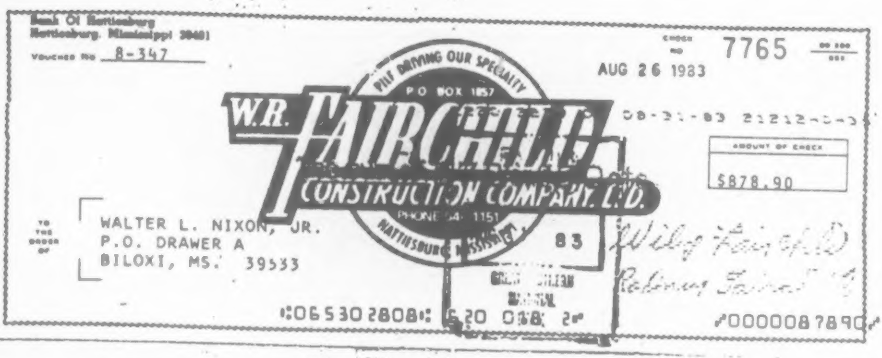
W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
PHONE 544 1151
HATTIESBURG, MISSISSIPPI

AUG

GREAT SOUTHERN NATIONAL

Wiley Fairchild
Rodney Fairchild

⑆065302808⑆ 620 018 2⑈ ⑈0000093802⑈



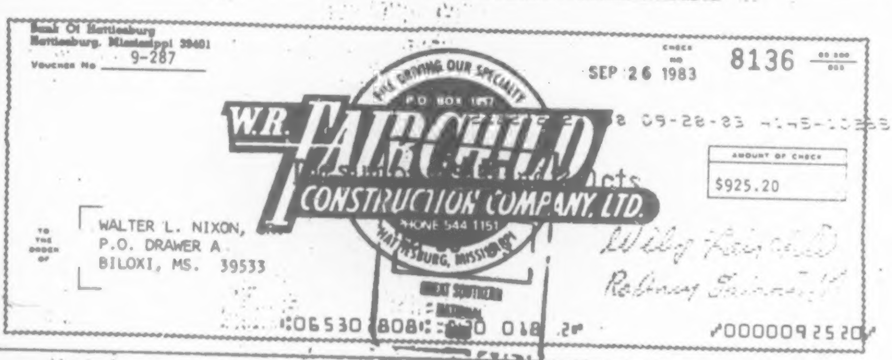
Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 8-347

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
PHONE 544 1151
HATTIESBURG, MISSISSIPPI

CHECK NO 7765
AUG 26 1983
AMOUNT OF CHECK $878.90

TO THE ORDER OF
WALTER L. NIXON, JR.
P.O. DRAWER A
BILOXI, MS. 39533

065302808 620 018 2
0000087890



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 9-287

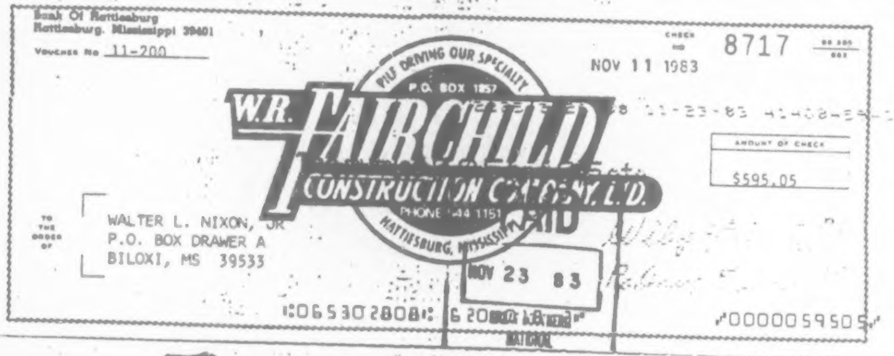
W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
PHONE 544 1151
HATTIESBURG, MISSISSIPPI

CHECK NO 8136
SEP 26 1983
09-28-83
AMOUNT OF CHECK $925.20

TO THE ORDER OF
WALTER L. NIXON, JR.
P.O. DRAWER A
BILOXI, MS. 39533

GREAT SOUTHERN NATIONAL BANK

065302808 620 018 2
0000092520



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 11-200

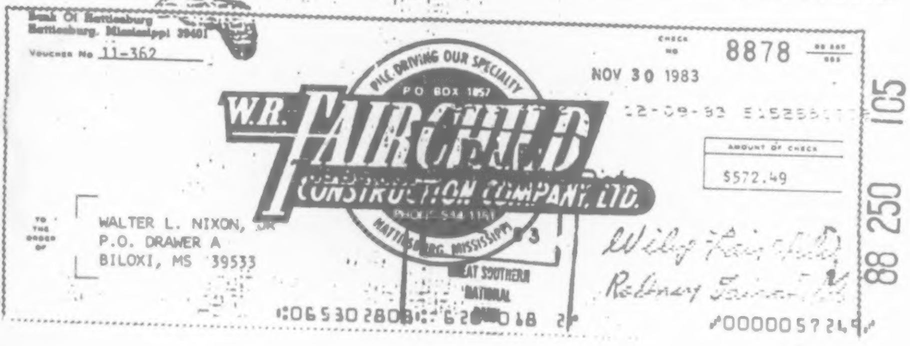
W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
PHONE 544 1151
HATTIESBURG, MISSISSIPPI

CHECK NO 8717
NOV 11 1983
11-23-83
AMOUNT OF CHECK $595.05

TO THE ORDER OF
WALTER L. NIXON, JR
P.O. BOX DRAWER A
BILOXI, MS 39533

PAID
NOV 23 83
GREAT SOUTHERN NATIONAL

065302808 620 018 2
0000059505



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 11-362

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
PHONE 544 1151
HATTIESBURG, MISSISSIPPI

CHECK NO 8878
NOV 30 1983
12-09-83
AMOUNT OF CHECK $572.49

TO THE ORDER OF
WALTER L. NIXON, JR
P.O. DRAWER A
BILOXI, MS 39533

GREAT SOUTHERN NATIONAL BANK

065302808 620 018 2
0000057249

88 250 105

For Deposit Only
WALTER L. NIXON, JR.
Peoples Bank of Biloxi
Acct # 00[illegible] 823 6

PAY ANY BANK, P.E.G.
PEOPLES BANK
OF BILOXI
BILOXI, MISSISSIPPI
85-75 85-75

SEP 2[illegible] 82

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[redacted]

For Deposit Only
WALTER L. NIXON, JR.
Special Account
007-827-2
2221
Peoples Bank of Biloxi

PAY ANY BANK, P.E.G.
THE PEOPLES
BANK OF BILOXI
BILOXI, MISSISSIPPI
85-75 85-75

OCT [illegible] 82

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For Deposit Only
WALTER L. NIXON, JR.
Special Account
007-827-2 44495
Peoples Bank of Biloxi

PAY ANY BANK, P.E.G.
BANK OF BILOXI
BILOXI, MISSISSIPPI
85-75 85-75

MAY -1 82

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For Deposit Only
WALTER L. NIXON, JR.
Acct # 007-827-2
Peoples Bank of Biloxi

85-75 85-75

F Deposit Only

Walter L. Nixon Jr

Peoples Bank of Biloxi

007-827-2

Spec Acct

THE PEOPLES
BANK OF BILOXI
BILOXI, MISSISSIPPI
85-75 85-75

JAN 26 83

---

For Deposit Only
WALTER L. NIXON, JR.

Peoples Bank of Biloxi

Acct # 007-827-2

PAY ANY BANK, P.E.G.
PEOPLES BANK
OF BILOXI
BILOXI, MISSISSIPPI
85-75 85-75

JAN 31 83

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For Deposit Only
WALTER L. NIXON, JR.

Peoples Bank

Special Acct

# 007-827-2

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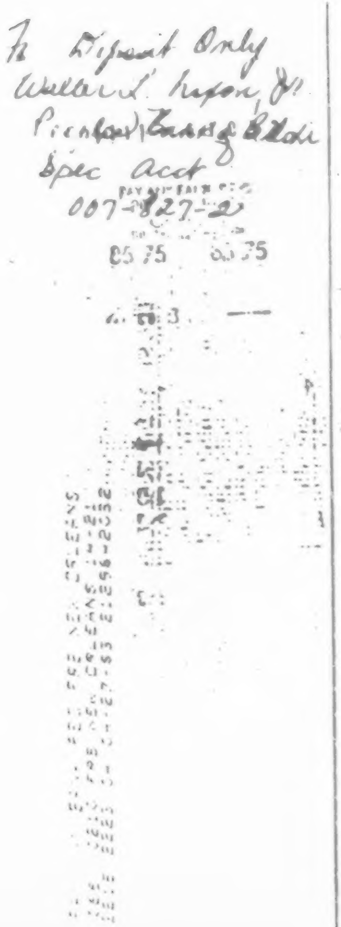
For Deposit Only
WALTER L. NIXON, JR.

Peoples Bank of Biloxi

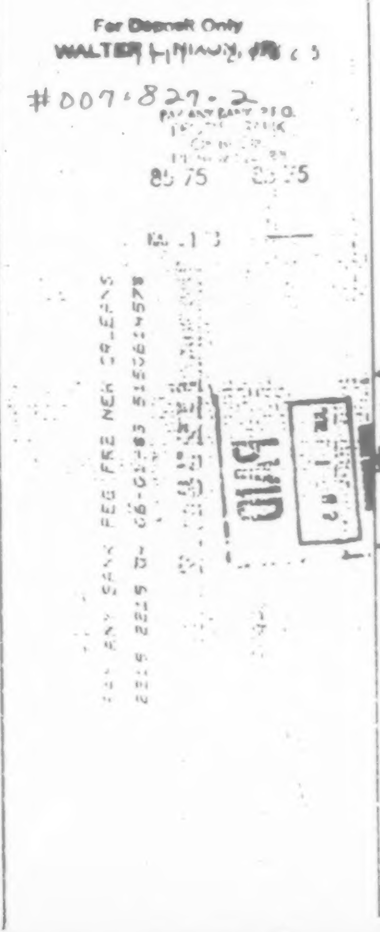
Special Acct

# 007-827-2


To Deposit Only
Walter L. Nixon, Jr.
Peoples Bank of Biloxi
Spec Acct
007-827-2

PAY ANY BANK P.E.G.

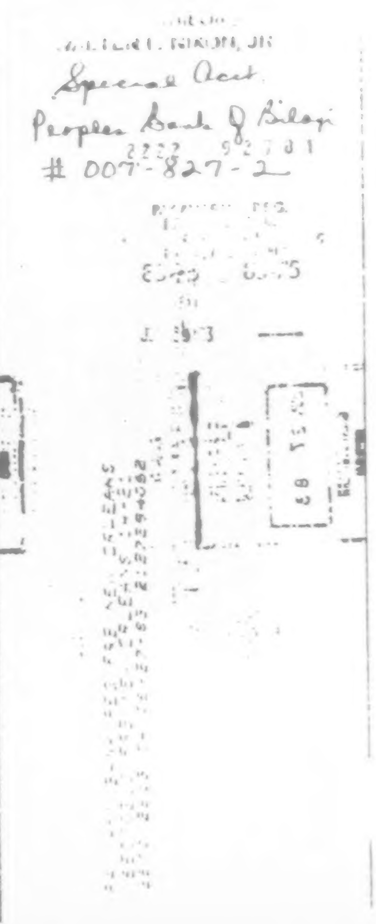
85 75 85 75


For Deposit Only
WALTER L. NIXON, JR.
#007-827-2

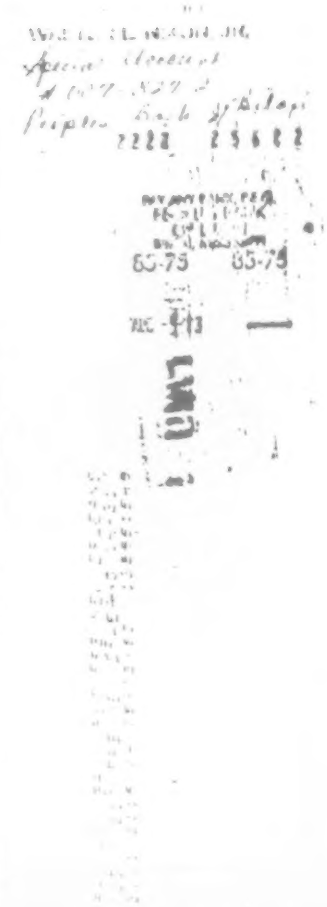
PAY ANY BANK P.E.G.

85 75 85 75

PAY ANY BANK FEG FRB NEW ORLEANS

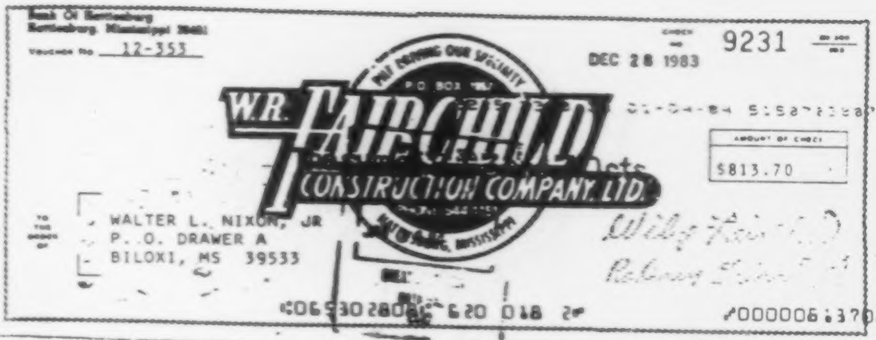

WALTER L. NIXON, JR.
Special Acct.
Peoples Bank of Biloxi
2222 92781
#007-827-2

85 75 85 75


WALTER L. NIXON, JR.
Special Account
# 007-827-2
Peoples Bank of Biloxi
2222 25622

PAY ANY BANK P.E.G.

85-75 85-75



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No. 12-353

CHECK NO. 9231

DEC 28 1983

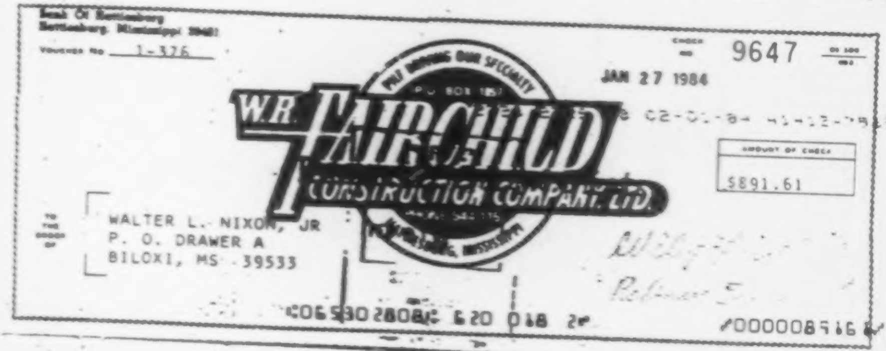
01-04-84

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
HATTIESBURG, MISSISSIPPI

AMOUNT OF CHECK
$813.70

TO THE ORDER OF
WALTER L. NIXON, JR
P. O. DRAWER A
BILOXI, MS 39533

065302808 620 018 2 /0000081370/



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No. 1-376

CHECK NO. 9647

JAN 27 1984

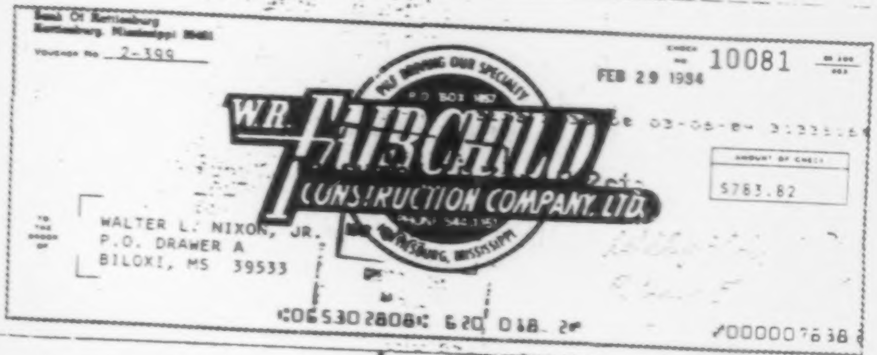
02-01-84

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
HATTIESBURG, MISSISSIPPI

AMOUNT OF CHECK
$891.61

TO THE ORDER OF
WALTER L. NIXON, JR
P. O. DRAWER A
BILOXI, MS 39533

065302808 620 018 2 /0000089161/



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No. 2-399

CHECK NO. 10081

FEB 29 1984

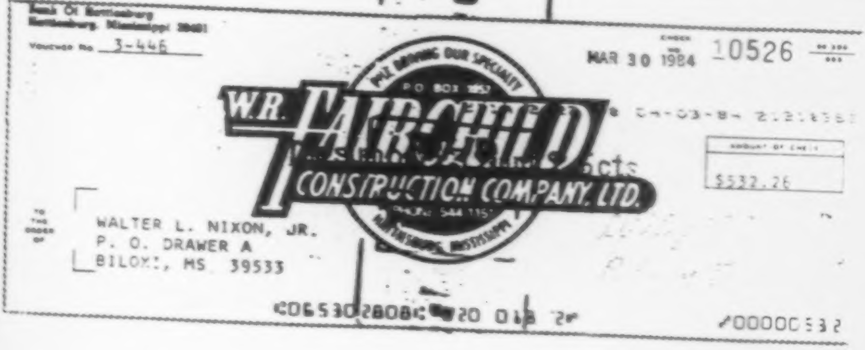
03-05-84

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
HATTIESBURG, MISSISSIPPI

AMOUNT OF CHECK
$783.82

TO THE ORDER OF
WALTER L. NIXON, JR.
P.O. DRAWER A
BILOXI, MS 39533

065302808 620 018 2 /000007838



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No. 3-446

CHECK NO. 10526

MAR 30 1984

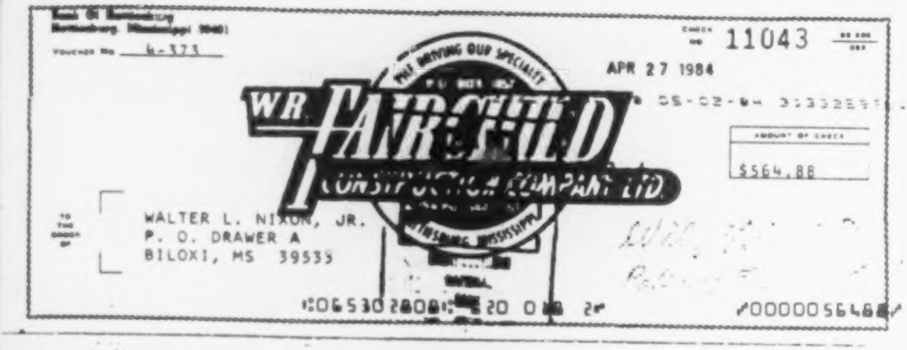
04-03-84

W.R. FAIRCHILD CONSTRUCTION COMPANY, LTD.
PILE DRIVING OUR SPECIALTY
P.O. BOX 1857
HATTIESBURG, MISSISSIPPI

AMOUNT OF CHECK
$532.26

TO THE ORDER OF
WALTER L. NIXON, JR.
P. O. DRAWER A
BILOXI, MS 39533

065302808 620 018 2 /00000532



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No. 4-373

CHECK No. 11043

APR 27 1984

05-02-84

W.R. FAIRCHILD CONSTRUCTION COMPANY LTD
PILE DRIVING OUR SPECIALTY
HATTIESBURG, MISSISSIPPI

AMOUNT OF CHECK
$564.88

TO THE ORDER OF
WALTER L. NIXON, JR.
P. O. DRAWER A
BILOXI, MS 39535

⑆065302808⑆ 620 018 2⑈ ⑈0000056488⑈

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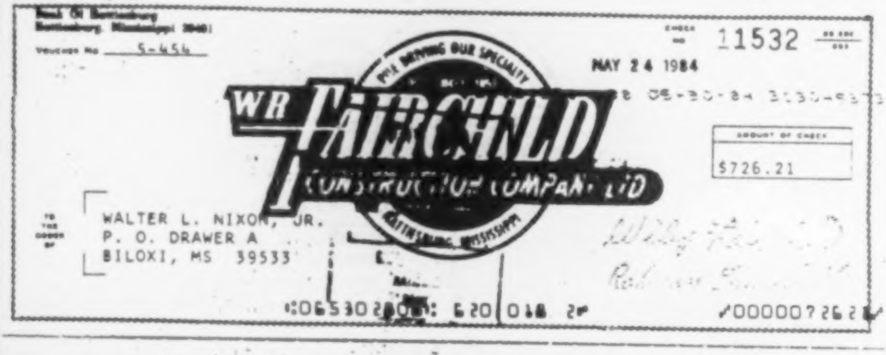

Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No. 5-454

CHECK No. 11532

MAY 24 1984

05-30-84

W.R. FAIRCHILD CONSTRUCTION COMPANY LTD
PILE DRIVING OUR SPECIALTY
HATTIESBURG, MISSISSIPPI

AMOUNT OF CHECK
$726.21

TO THE ORDER OF
WALTER L. NIXON, JR.
P. O. DRAWER A
BILOXI, MS 39533

⑆065302808⑆ 620 018 2⑈ ⑈0000072621⑈

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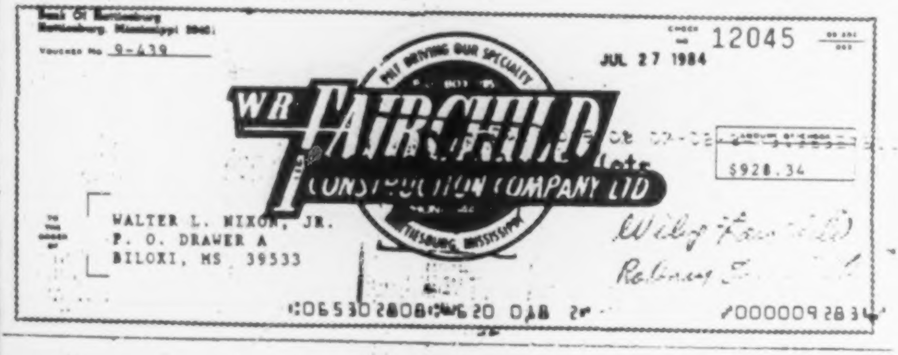

Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No. 9-439

CHECK No. 12045

JUL 27 1984

W.R. FAIRCHILD CONSTRUCTION COMPANY LTD
PILE DRIVING OUR SPECIALTY
HATTIESBURG, MISSISSIPPI

AMOUNT OF CHECK
$928.34

TO THE ORDER OF
WALTER L. NIXON, JR.
P. O. DRAWER A
BILOXI, MS 39533

⑆065302808⑆ 620 018 2⑈ ⑈0000092834⑈

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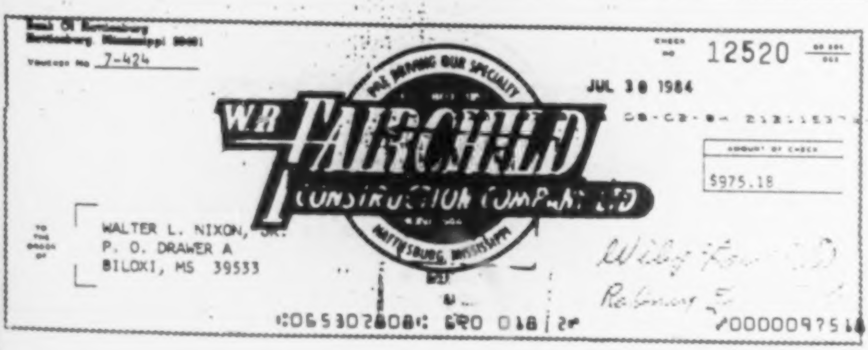


Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No. 7-424

CHECK No. 12520

JUL 30 1984

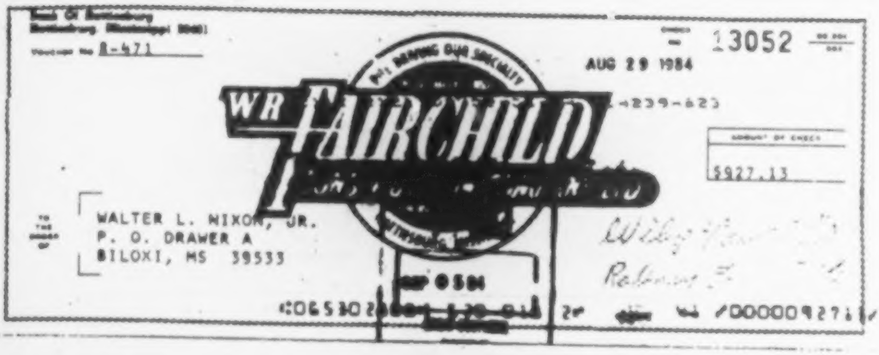
08-02-84

W.R. FAIRCHILD CONSTRUCTION COMPANY LTD
PILE DRIVING OUR SPECIALTY
HATTIESBURG, MISSISSIPPI

AMOUNT OF CHECK
$975.18

TO THE ORDER OF
WALTER L. NIXON, JR.
P. O. DRAWER A
BILOXI, MS 39533

⑆065302808⑆ 620 018 2⑈ ⑈0000097518⑈



Voucher No 8-471

CHECK 13052

AUG 29 1984

AMOUNT OF CHECK $927.13

TO THE ORDER OF
WALTER L. NIXON, JR.
P. O. DRAWER A
BILOXI, MS 39533

⑆065302808⑆ 620 018 2⑈ ⑈0000092713⑈

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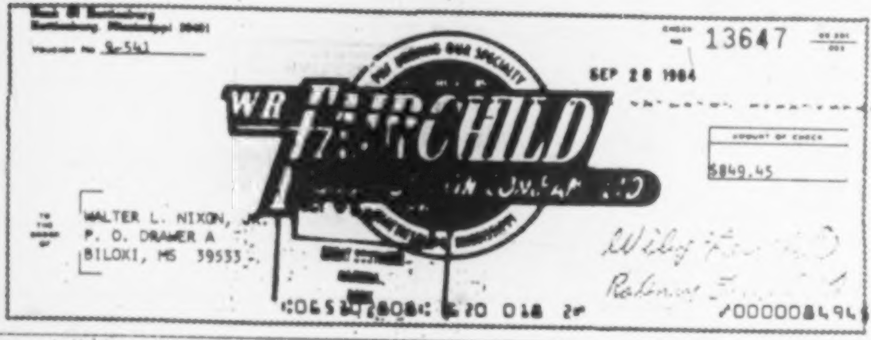

Voucher No 9-541

CHECK 13647

SEP 28 1984

AMOUNT OF CHECK $849.45

TO THE ORDER OF
WALTER L. NIXON, JR.
P. O. DRAWER A
BILOXI, MS 39533

⑆065302808⑆ 620 018 2⑈ ⑈0000084945⑈

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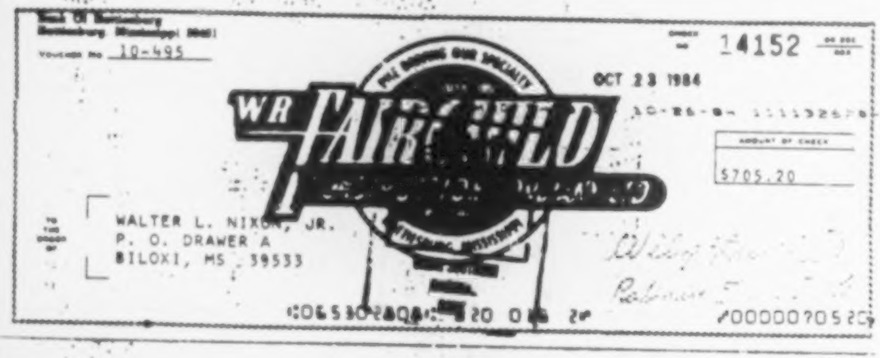

Voucher No 10-495

CHECK 14152

OCT 23 1984

AMOUNT OF CHECK $705.20

TO THE ORDER OF
WALTER L. NIXON, JR.
P. O. DRAWER A
BILOXI, MS 39533

⑆065302808⑆ 620 018 2⑈ ⑈0000070520⑈

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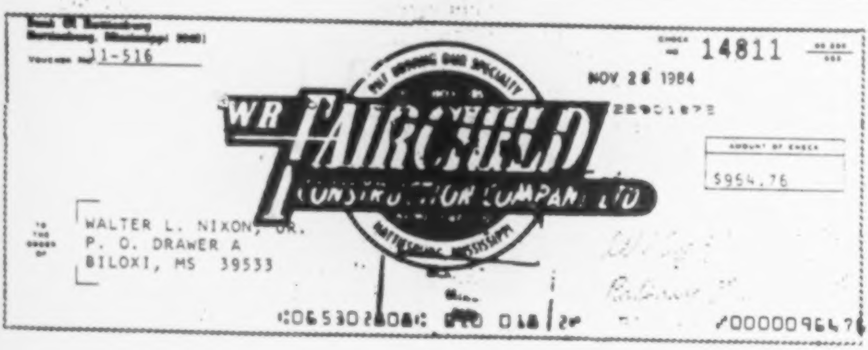

Voucher No 11-516

CHECK 14811

NOV 28 1984

AMOUNT OF CHECK $954.76

TO THE ORDER OF
WALTER L. NIXON, JR.
P. O. DRAWER A
BILOXI, MS 39533

⑆065302808⑆ 620 018 2⑈ ⑈0000095476⑈

1111 97457

PAY ANY BANK P.E.G.

85.75 85.75

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FOR DEPOSIT ONLY
Walter L. Nixon, Jr
Acct #007-827-2
Peoples Bank of Biloxi
Special Account

2222 33912

PAY ANY BANK P.E.G.

85.75 85.75

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For Deposit Only
Walter L. Nixon, Jr
#007-827-2

2222 97894

PAY ANY BANK P.E.G.

85.75 85.75

---

FOR DEPOSIT ONLY
Walter L. Nixon, Jr
#007-827-2
Peoples Bank of Biloxi
Special Account

2222 7 59

85.75 85.75

For Deposit Only
[illegible] Nixon Jr
# 007-827-2

1111 43969

85.75 35.75

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FOR DEPOSIT ONLY

Walter L. Nixon, Jr.
Acct #007-827-2
Special Account
Peoples Bank

85.75 85.75

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FOR DEPOSIT ONLY
Walter L. Nixon, Jr.
Special Account
#007-827-2
Peoples Bank

2228 42307

PAY ANY BANK P.P.G.
PEOPLES BANK

85.75 85.75

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FOR DEPOSIT ONLY
Walter L. Nixon, Jr.
Special Account
#007-827-2
Peoples Bank

1111 73282

85.75 85.75

R DEPOSIT ONLY
lter L. Nixon, Jr.
#007-827-2

2222 91599

85-75 85-75

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FOR DEPOSIT ONLY
Walter L. Nixon Jr.
#007-827-2

1111 76239

PAY ANY BANK P.E.G.
PEOPLES BANK
OF BILOXI

85-75 85-75

MAY 23 '84

---

FOR DEPOSIT ONLY
Walter L. Nixon, Jr.
Special Account
Peoples Bank of Biloxi
#007-827-2

2222 37460

85-75 85-75

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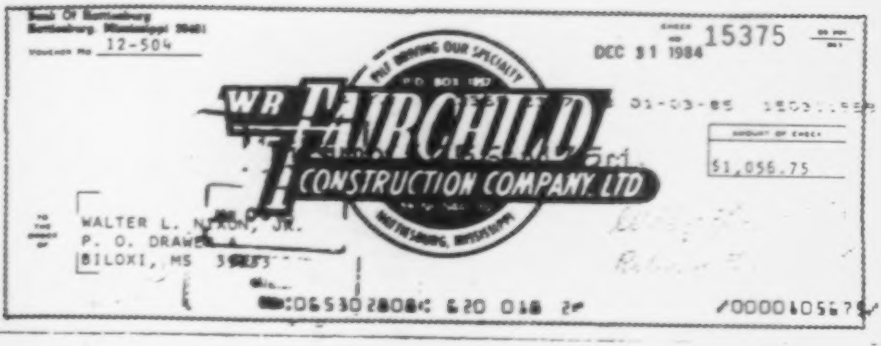
FOR DEPOSIT ONLY
Walter L. Nixon, Jr.

1111 60354

PAY ANY BANK P.E.G.

85-75 85-75



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No. 12-504

Check No. 15375
DEC 31 1984

WR FAIRCHILD CONSTRUCTION COMPANY, LTD
PILE DRIVING OUR SPECIALTY
P.O. BOX 1957
HATTIESBURG, MISSISSIPPI

01-03-85

Amount of Check
$1,056.75

To the order of
WALTER L. NIXON, JR.
P. O. DRAWER A
BILOXI, MS 39533

:065302808: 620 018 2" /0000105675/

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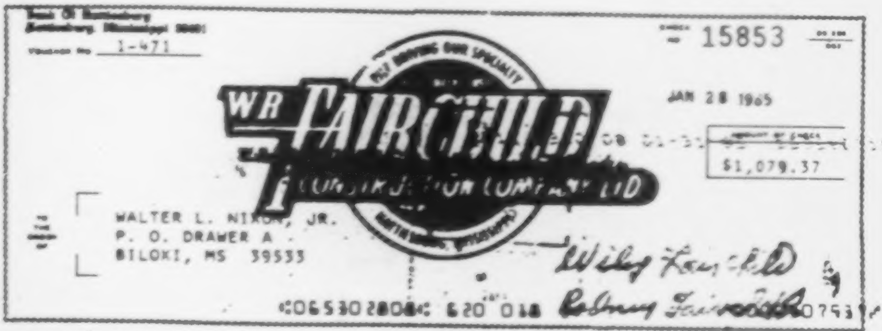


Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No. 1-471

Check No. 15853
JAN 28 1985

WR FAIRCHILD CONSTRUCTION COMPANY, LTD
PILE DRIVING OUR SPECIALTY
HATTIESBURG, MISSISSIPPI

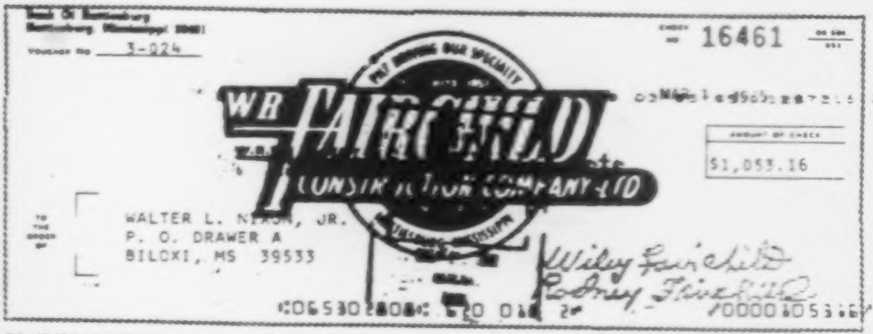
Amount of Check
$1,079.37

To the order of
WALTER L. NIXON, JR.
P. O. DRAWER A
BILOXI, MS 39533

Wiley Fairchild
Rodney Fairchild

:065302808: 620 018 07937/

---



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No. 3-024

Check No. 16461

WR FAIRCHILD CONSTRUCTION COMPANY, LTD
PILE DRIVING OUR SPECIALTY
HATTIESBURG, MISSISSIPPI

Amount of Check
$1,053.16

To the order of
WALTER L. NIXON, JR.
P. O. DRAWER A
BILOXI, MS 39533

Wiley Fairchild
Rodney Fairchild

:065302808: 620 018 2" /0000105316/

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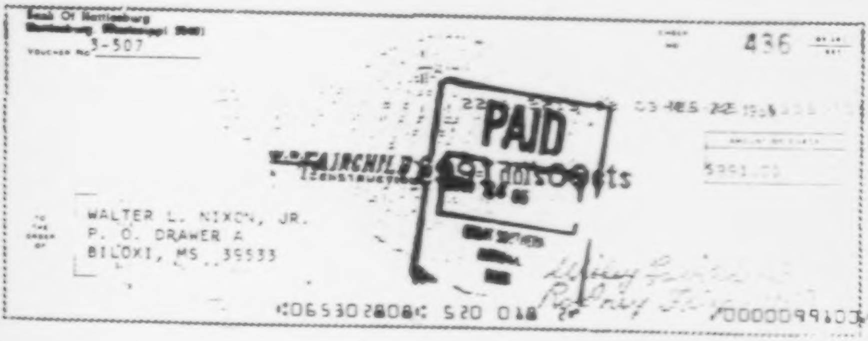


Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No. 3-507

Check No. 436

PAID

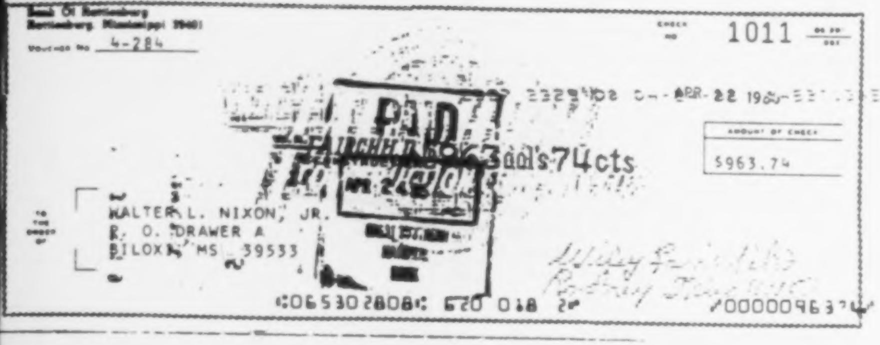
W.R. FAIRCHILD CONSTRUCTION

Amount of Check
$991.03

To the order of
WALTER L. NIXON, JR.
P. O. DRAWER A
BILOXI, MS 39533

Wiley Fairchild
Rodney Fairchild

:065302808: 520 018 2" /0000099103/



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 4-284

Check No 1011

APR 22 1985

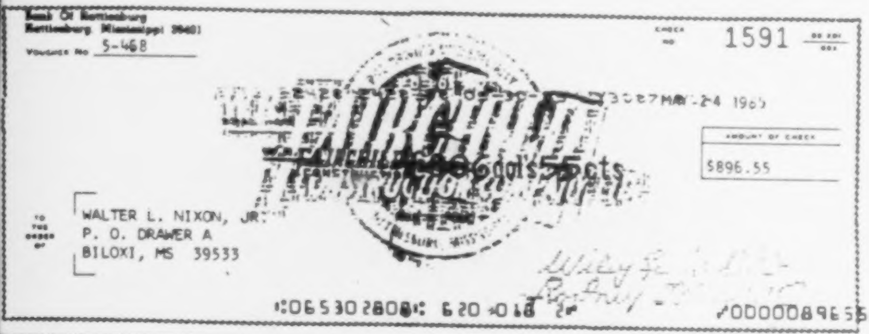
Amount of Check
$963.74

963dols74cts

To the order of
WALTER L. NIXON, JR.
P. O. DRAWER A
BILOXI, MS 39533

PAID

⑆065302808⑆ 620 018 2⑈ ⑈0000096374⑈



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 5-468

Check No 1591

MAY 24 1985

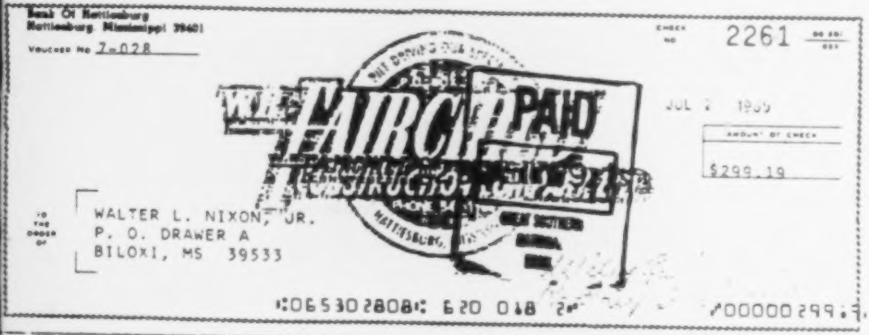
Amount of Check
$896.55

896dols55cts

FAIRCHILD

To the order of
WALTER L. NIXON, JR.
P. O. DRAWER A
BILOXI, MS 39533

⑆065302808⑆ 620 018 2⑈ ⑈0000089655⑈



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 7-028

Check No 2261

JUL 2 1985

Amount of Check
$299.19

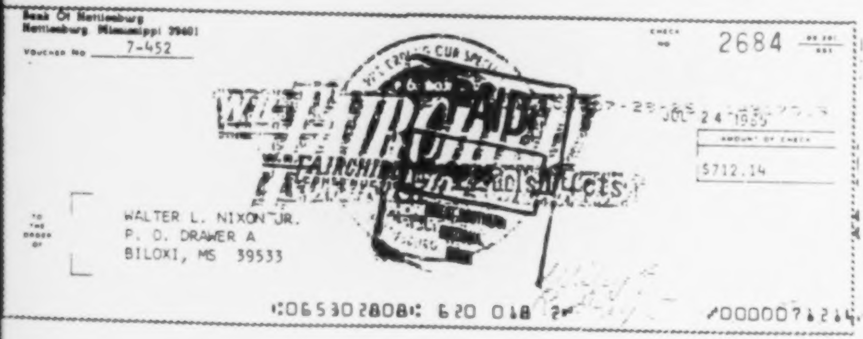
FAIRCH PAID

CONSTRUCTION

HATTIESBURG

To the order of
WALTER L. NIXON, JR.
P. O. DRAWER A
BILOXI, MS 39533

⑆065302808⑆ 620 018 2⑈ ⑈0000029919⑈



Bank Of Hattiesburg
Hattiesburg, Mississippi 39401
Voucher No 7-452

Check No 2684

JUL 24 1985

Amount of Check
$712.14

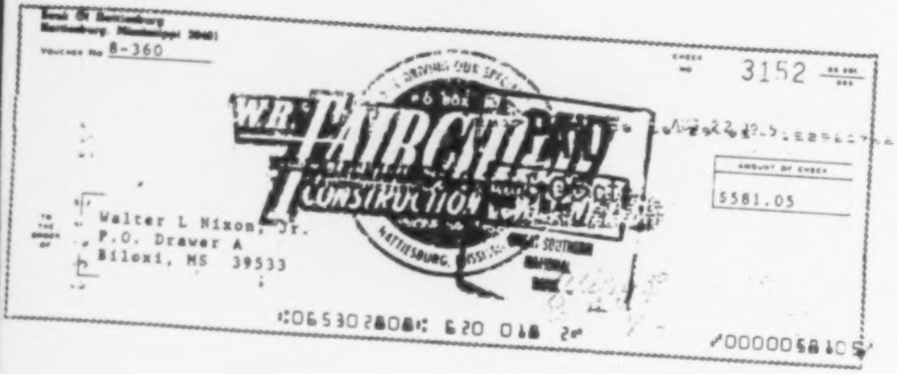
PAID

FAIRCHILD

712dols14cts

To the order of
WALTER L. NIXON JR.
P. O. DRAWER A
BILOXI, MS 39533

⑆065302808⑆ 620 018 2⑈ ⑈0000071214⑈



Voucher No 8-360

Check No 3152

W.R. FAIRCHILD CONSTRUCTION

HATTIESBURG, MISSISSIPPI

AMOUNT OF CHECK

$581.05

To the order of

Walter L Nixon, Jr.
P.O. Drawer A
Biloxi, MS 39533

⑆065302808⑆ 620 018 2⑈ ⑈0000058105⑈

COMMITTEE EXHIBIT NO. 10

DEPOSIT ONLY
...ter L. Nixon Jr.

PAY ANY BANK P.E.G.
PEOPLES BANK
85-75 85-75

---

FOR DEPOSIT ONLY
Walter L. Nixon, Jr.

PAY ANY BANK P.E.G.
PEOPLES BANK
85-75 85-75

---

FOR DEPOSIT ONLY
Walter L. Nixon Jr.
#007-827-2

PAY ANY BANK P.E.G.
85-75 85-75

PAY ANY BANK P.E.G.
BANK OF HATTIESBURG
HATTIESBURG MS
85-280 85-280

---

FOR DEPO ONLY
Walter L. Nixon, Jr.

FOR DEPOSIT ONLY
Walter L. Nixon, Jr.
# 827 2

PAY ANY BANK P.E.G.

85-75 85-75

---

FOR DEPOSIT ONLY
Walter L. Nixon, Jr.

3333 87267

PAY ANY BANK P.E.G.
THE
PEOPLES BANK
85-75 85-75

---

FOR DEPOSIT ONLY
Walter L. Nixon, Jr.
#007-827-2

2222 62998

PAY ANY BANK P.E.G.
85 75 85-75

---

FOR DEPOSIT ONLY

3 82176

PAY ANY BANK P.E.G.
THE
PEOPLES BANK
85-75 85-75

FOR DEPOSIT ONLY
[illegible] L. NIXON, JR.

2222 37319

PAY ANY BANK PEG
PEG WEST BANK
OF [illegible]
[illegible]

85 75 85-75

AP 23 75

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FOR DEPOSIT ONLY
Walter L. Nixon, Jr.
[illegible] 23495

[illegible] PEG
[illegible] BK
[illegible] 85-75

[illegible]

PAY ANY BANK PEG FRB NEW ORLEANS
[illegible] 13087 [illegible]

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FOR DEPOSIT ONLY
WALTER L. NIXON, JR.

[illegible]

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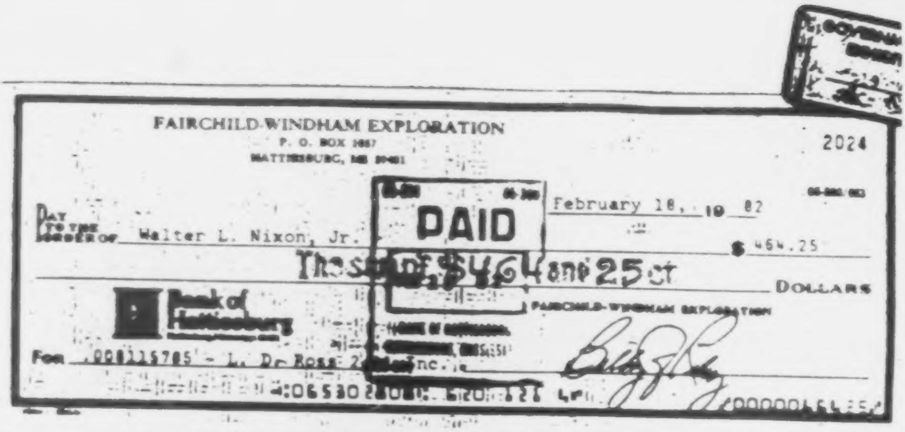
FOR DEPOSIT [illegible]
WALTER L [illegible]

[illegible]



FAIRCHILD-WINDHAM EXPLORATION
P. O. BOX 1667
HATTIESBURG, MS 39401

2024

February 18, 19 82

PAY TO THE ORDER OF Walter L. Nixon, Jr. $ 464.25

The sum of $464 and 25 ct DOLLARS

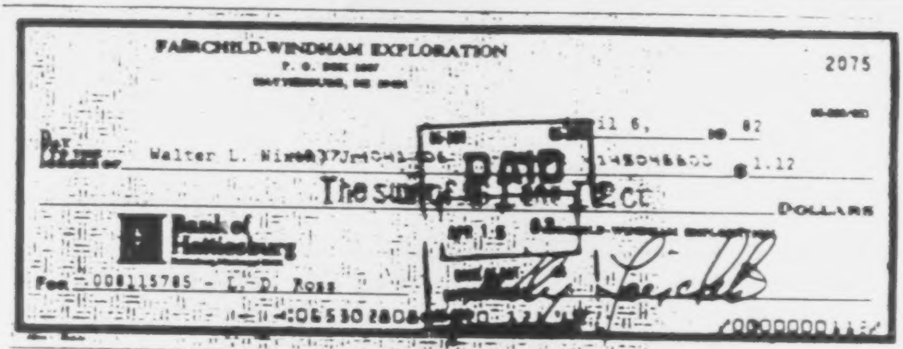
PAID

Bank of Hattiesburg

FAIRCHILD-WINDHAM EXPLORATION

FOR .008115785 - L. D. Ross 2 [illegible] Inc.

⑈06530280⑈ 620 121 4⑈ ⑈0000046425⑈



FAIRCHILD-WINDHAM EXPLORATION
P. O. BOX 1667
HATTIESBURG, MS 39401

2075

April 6, 19 82

PAY TO THE ORDER OF Walter L. Nixon, Jr. $ 1.12

The sum of $1 and 12 ct DOLLARS

PAID

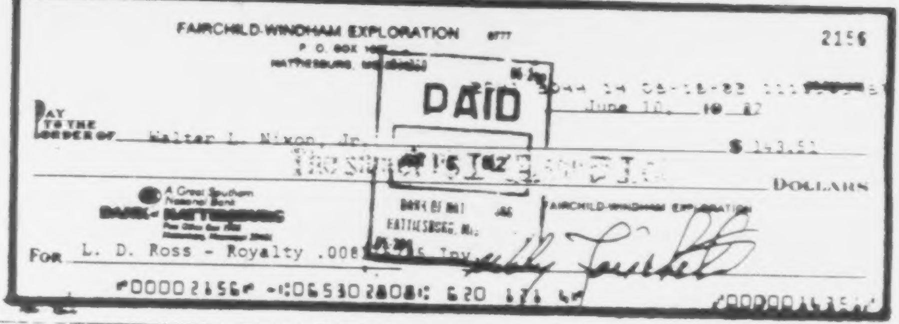
APR 1 5 82

Bank of Hattiesburg

FAIRCHILD-WINDHAM EXPLORATION

FOR .008115785 - L. D. Ross

⑈06530280⑈ ⑈0000000112⑈



FAIRCHILD-WINDHAM EXPLORATION 6777
P. O. BOX 1667
HATTIESBURG, MS 39401

2156

June 10, 19 82

PAY TO THE ORDER OF Walter L. Nixon, Jr. $ 143.51

DOLLARS

PAID

JUN 1 6 1982

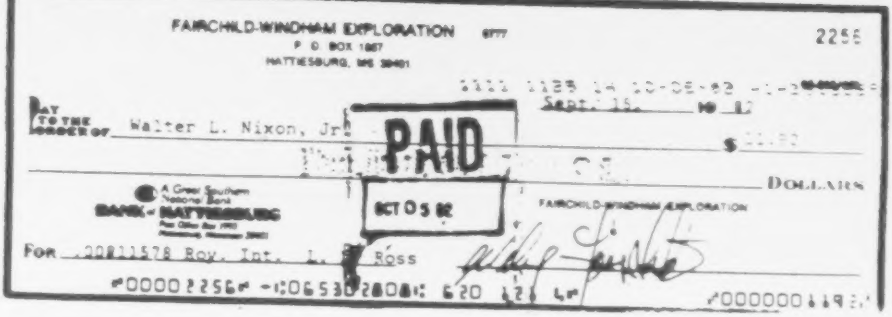
BANK OF HATTIESBURG, MS.

A Great Southern National Bank
BANK of HATTIESBURG

FAIRCHILD-WINDHAM EXPLORATION

FOR L. D. Ross - Royalty .008 [illegible] Inv.

⑈00002156⑈ ⑈06530280⑈ 620 121 4⑈ ⑈0000014351⑈



FAIRCHILD-WINDHAM EXPLORATION 6777
P. O. BOX 1667
HATTIESBURG, MS 39401

2256

Sept. 15, 19 82

PAY TO THE ORDER OF Walter L. Nixon, Jr. $ [illegible]

DOLLARS

PAID

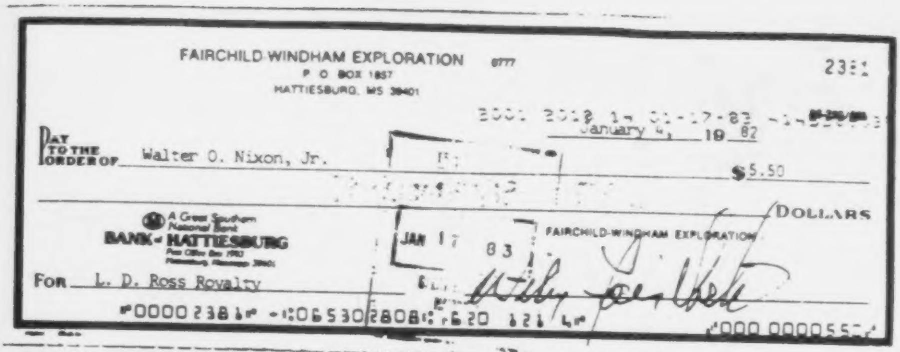
OCT 0 5 82

A Great Southern National Bank
BANK of HATTIESBURG

FAIRCHILD-WINDHAM EXPLORATION

FOR .00811578 Roy. Int. L. D. Ross

⑈00002256⑈ ⑈06530280⑈ 620 121 4⑈ ⑈00000011 9 [illegible]⑈



FAIRCHILD-WINDHAM EXPLORATION 0777
P. O. BOX 1857
HATTIESBURG, MS 39401

2381

2001 2018 14 01-17-83

January 4, 19 82

PAY TO THE ORDER OF Walter O. Nixon, Jr. $5.50

DOLLARS

A Great Southern National Bank
BANK of HATTIESBURG

FAIRCHILD-WINDHAM EXPLORATION

JAN 17 83

FOR L. D. Ross Royalty

⑈0000 2381⑈ ⑆06530 2808⑆ 620 121 4⑈ ⑈000 00005 50⑈

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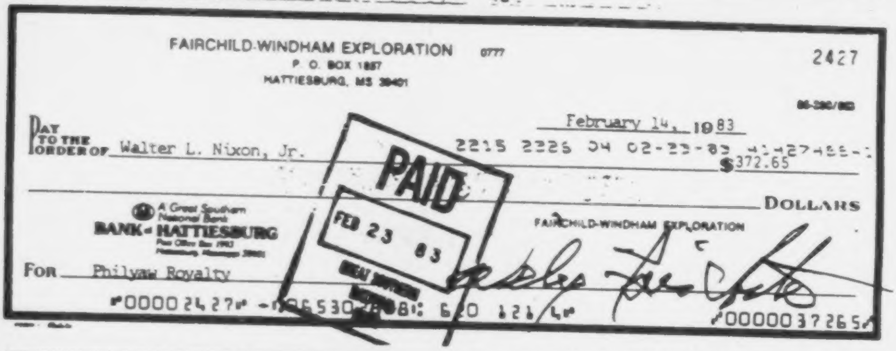

FAIRCHILD-WINDHAM EXPLORATION 0777
P. O. BOX 1857
HATTIESBURG, MS 39401

2427

85-280/853

February 14, 1983

2215 2226 04 02-23-83

PAY TO THE ORDER OF Walter L. Nixon, Jr. $372.65

DOLLARS

A Great Southern National Bank
BANK of HATTIESBURG

PAID
FEB 23 83

FAIRCHILD-WINDHAM EXPLORATION

FOR Philyaw Royalty

⑈0000 2427⑈ ⑆06530 2808⑆ 620 121 4⑈ ⑈0000037265⑈

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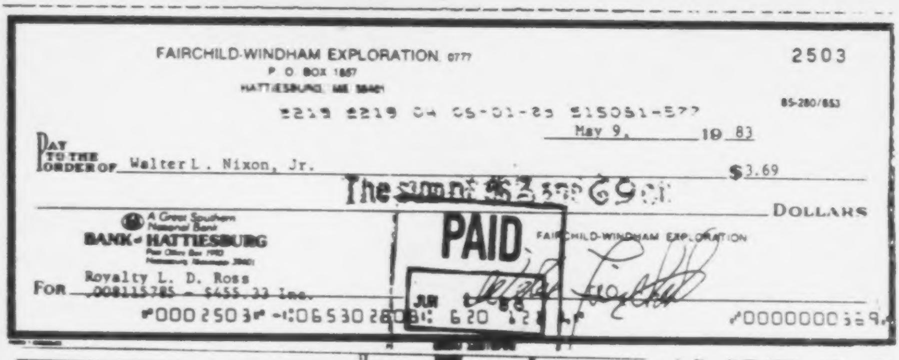

FAIRCHILD-WINDHAM EXPLORATION 0777
P. O. BOX 1857
HATTIESBURG, MS 39401

2503

85-280/853

2219 2219 04 05-01-83 515051-577

May 9, 19 83

PAY TO THE ORDER OF Walter L. Nixon, Jr. $3.69

The sum of $3 and 69 cts

DOLLARS

A Great Southern National Bank
BANK of HATTIESBURG

PAID

FAIRCHILD-WINDHAM EXPLORATION

Royalty L. D. Ross
FOR 008115785 - $455.33 Inc.

JUN

⑈000 2503⑈ ⑆06530 2808⑆ 620 121 4⑈ ⑈00000003 69⑈

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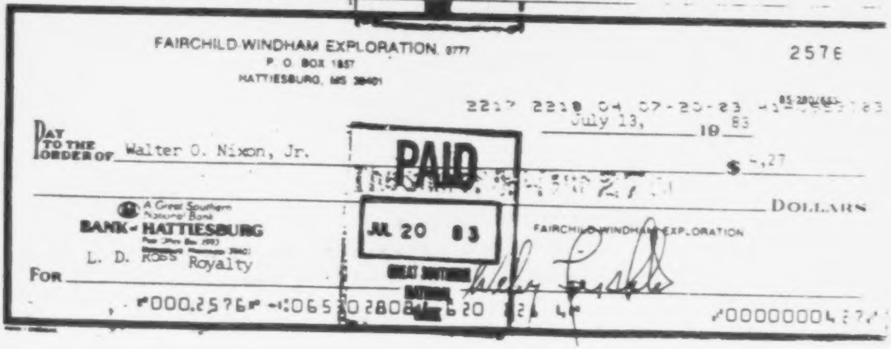


FAIRCHILD-WINDHAM EXPLORATION 0777
P. O. BOX 1857
HATTIESBURG, MS 39401

2576

85-280/853

2217 2218 04 07-20-83

July 13, 19 83

PAY TO THE ORDER OF Walter O. Nixon, Jr. $4.27

DOLLARS

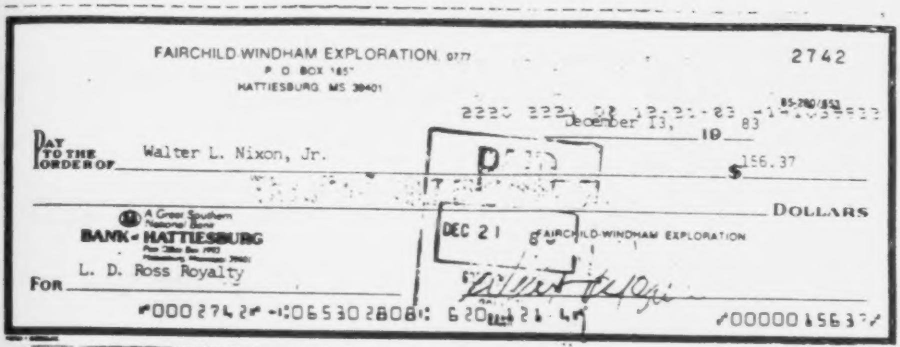
A Great Southern National Bank
BANK of HATTIESBURG

PAID
JUL 20 83
GREAT SOUTHERN NATIONAL BANK

FAIRCHILD-WINDHAM EXPLORATION

L. D. Ross Royalty
FOR

⑈000 2576⑈ ⑆06530 2808⑆ 620 121 4⑈ ⑈00000004 27⑈



FAIRCHILD-WINDHAM EXPLORATION 0777
P. O. BOX 1857
HATTIESBURG, MS 39401

2742

85-280/853

December 13, 19 83

PAY TO THE ORDER OF Walter L. Nixon, Jr. $156.37

[illegible] DOLLARS

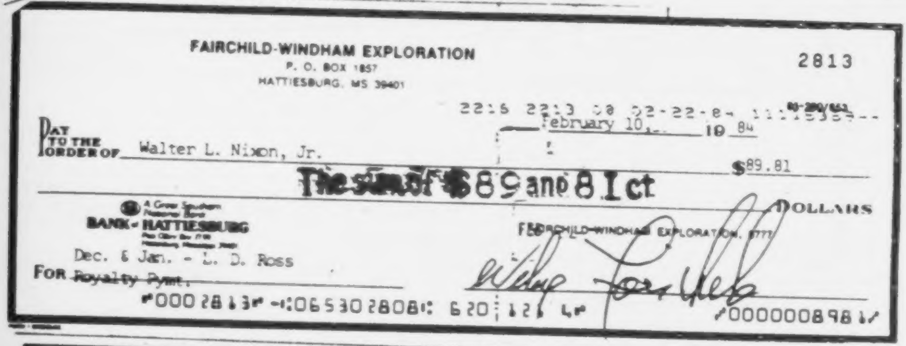
A Great Southern National Bank
BANK of HATTIESBURG

FOR L. D. Ross Royalty

PAID
DEC 21 83

FAIRCHILD-WINDHAM EXPLORATION

000 2742 065302808 620 121 4 0000015637



FAIRCHILD-WINDHAM EXPLORATION
P. O. BOX 1857
HATTIESBURG, MS 39401

2813

85-280/853

February 10, 19 84

PAY TO THE ORDER OF Walter L. Nixon, Jr. $89.81

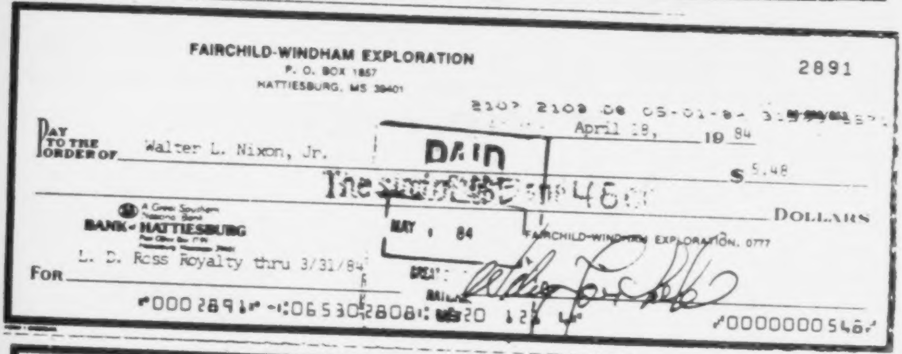
The sum of $89 and 81 ct DOLLARS

A Great Southern National Bank
BANK of HATTIESBURG

FOR Dec. & Jan. - L. D. Ross ~~Royalty Pymt.~~

FAIRCHILD-WINDHAM EXPLORATION, 0777

000 2813 065302808 620 121 4 0000008981



FAIRCHILD-WINDHAM EXPLORATION
P. O. BOX 1857
HATTIESBURG, MS 39401

2891

85-280/853

April 18, 19 84

PAY TO THE ORDER OF Walter L. Nixon, Jr. $5.48

The sum of $5 and 48 ct DOLLARS

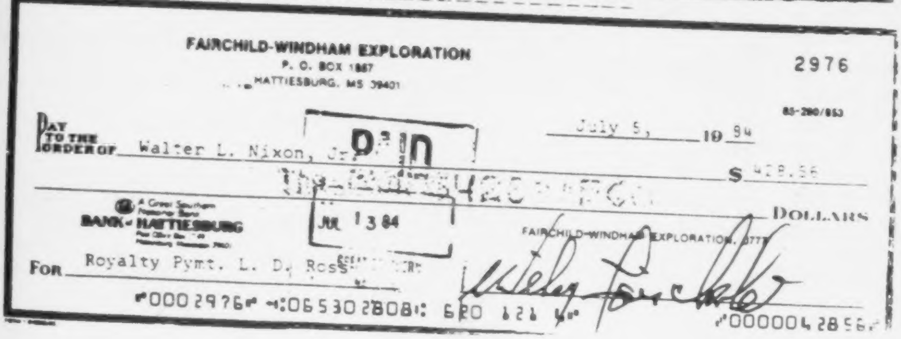
A Great Southern National Bank
BANK of HATTIESBURG

FOR L. D. Ross Royalty thru 3/31/84

PAID
MAY 1 84

FAIRCHILD-WINDHAM EXPLORATION, 0777

000 2891 065302808 620 121 4 0000000548



FAIRCHILD-WINDHAM EXPLORATION
P. O. BOX 1857
HATTIESBURG, MS 39401

2976

85-280/853

July 5, 19 84

PAY TO THE ORDER OF Walter L. Nixon, Jr. $428.56

[illegible] 428 [illegible] DOLLARS

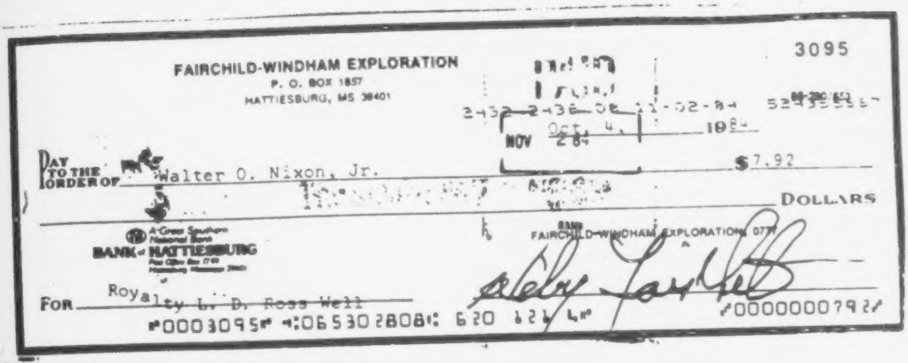
A Great Southern National Bank
BANK of HATTIESBURG

FOR Royalty Pymt. L. D. Ross

PAID
JUL 13 84

FAIRCHILD-WINDHAM EXPLORATION, 0777

000 2976 065302808 620 121 4 0000042856



**FAIRCHILD-WINDHAM EXPLORATION**
P. O. BOX 1857
HATTIESBURG, MS 39401

3095

2432 2436 02 11-02-84

Oct. 4, 19 84

NOV 2 84

PAY TO THE ORDER OF Walter O. Nixon, Jr. $7.92

DOLLARS

A Great Southern National Bank
BANK of HATTIESBURG

FAIRCHILD-WINDHAM EXPLORATION, 0777

FOR Royalty ~~L. D. Ross Well~~

0003095 065302808 620 121 4 0000000792

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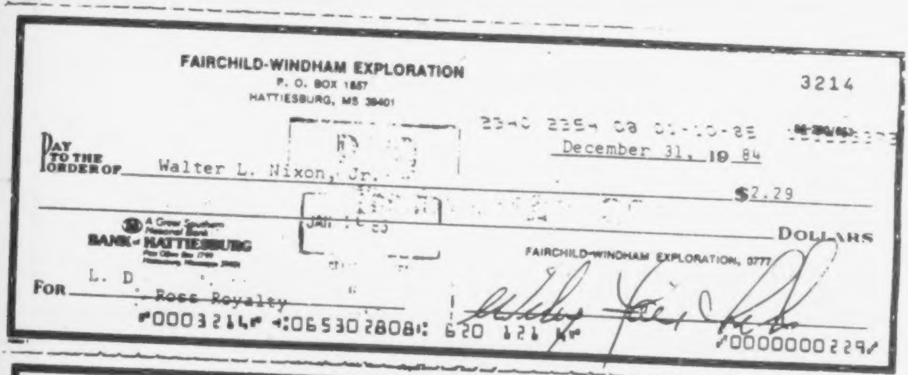

**FAIRCHILD-WINDHAM EXPLORATION**
P. O. BOX 1857
HATTIESBURG, MS 39401

3214

2340 2354 02 01-10-85

December 31, 19 84

PAY TO THE ORDER OF Walter L. Nixon, Jr. $2.29

JAN 10 85

DOLLARS

A Great Southern National Bank
BANK of HATTIESBURG

FAIRCHILD-WINDHAM EXPLORATION, 0777

FOR L. D ~~Ross Royalty~~

0003214 065302808 620 121 4 0000000229

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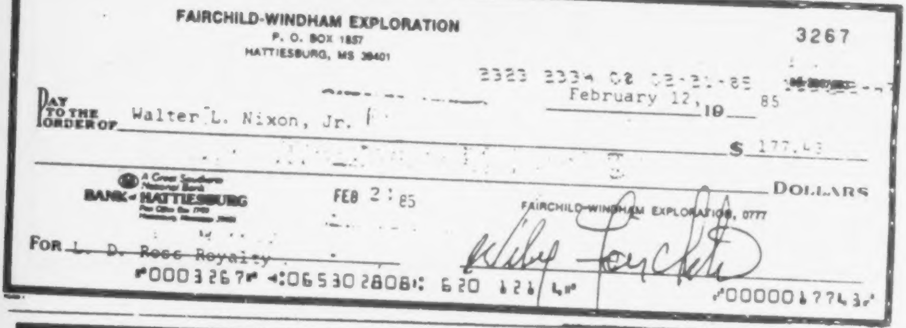

**FAIRCHILD-WINDHAM EXPLORATION**
P. O. BOX 1857
HATTIESBURG, MS 39401

3267

2323 2334 02 02-21-85

February 12, 19 85

PAY TO THE ORDER OF Walter L. Nixon, Jr. $177.43

DOLLARS

A Great Southern National Bank
BANK of HATTIESBURG

FEB 21 85

FAIRCHILD-WINDHAM EXPLORATION, 0777

FOR ~~L. D. Ross Royalty~~

0003267 065302808 620 121 4 0000017743

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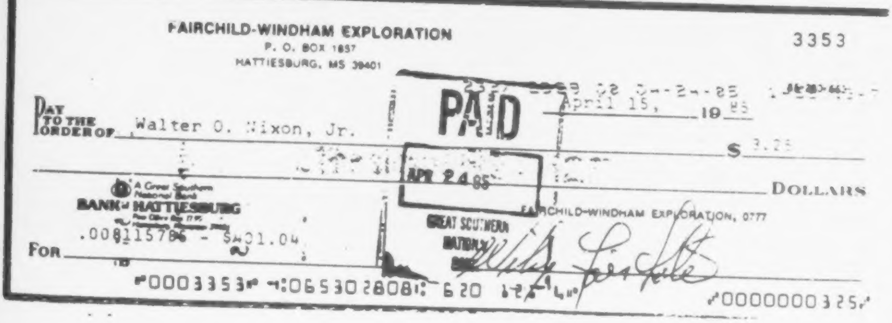

**FAIRCHILD-WINDHAM EXPLORATION**
P. O. BOX 1857
HATTIESBURG, MS 39401

3353

PAID

02 04-24-85

April 15, 19 85

PAY TO THE ORDER OF Walter O. Nixon, Jr. $3.25

APR 24 85

GREAT SOUTHERN NATIONAL BANK

DOLLARS

A Great Southern National Bank
BANK of HATTIESBURG

FAIRCHILD-WINDHAM EXPLORATION, 0777

.0081157 - $401.04

FOR

0003353 065302808 620 121 4 0000000325

JAN 30 1986
UNITED STATES DISTRICT
SOUTHERN DISTRICT

90

FOR DEPOSIT ONLY
Walter L. Nixon

PAY ANY BANK PEG FRB NEW ORLEANS

FOR DEPOSIT ONLY
Walter L. Nixon
4460 23490

PAY ANY BANK P.E.G.
THE PEOPLES BANK
85-75 85-75

JUL 29 85

PAY ANY BANK PEG FRB NEW ORLEANS

FOR DEPOSIT ONLY
Walter L. Nixon

1111 58760

PAY ANY BANK P.E.G.
THE
PEOPLES BANK
85-75 85-75

SEP -9 85

PAY ANY BANK PEG FRB NEW ORLEANS

FOR DEPOSIT ONLY
Walter L. Nixon Jr
Special Account
007-2222 53029

PAY ANY BANK P.E.G.
PEOPLES BANK
85 75 85-75

NOV -1 '84

PAY ANY BANK PEG FRB NEW ORLEANS
FRB NEW ORLEANS 11-21
2432 2436 08 11-02-84 524365687

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FOR DEPOSIT ONLY
Walter L. Nixon, Jr.

3333 17819

PAY ANY BANK P.E.G.
THE
PEOPLES BANK
85-75 85-75

JAN -9 '85

PAY ANY BANK PEG FRB NEW ORLEANS
11-21
2340 2354 08 01-10-85 161533372

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FOR DEPOSIT ONLY
Walter L. Nixon, Jr.

3333 70042

PAY ANY BANK P.E.G.
THE
PEOPLES BANK
85-75 85-75

PAY ANY BANK PEG FRB NEW ORLEANS
11-21
2333 2334 08 02-21-85 166022447

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FOR DEPOSIT ONLY
Walter L. Nixon, Jr.

2222 37910

PAY ANY BANK P.E.G.
PEOPLES BANK
85-75 85-75

APR 23 '85

[illegible]

For Deposit Only
Walter L. Nixon Jr
Special Acct.
# 007-827-2

PAY ANY BANK PFG.
PEOPLES BANK
OF BILOXI
BILOXI, MISSISSIPPI
85-75 85-75

[illegible] 20 '83

PAY ANY BANK PEG FRB NEW ORLEANS
[illegible] FRB NEW ORLEANS 14-21
[illegible] 2221 CS 12-21-83 [illegible]39938

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FOR DEPOSIT ONLY
Walter L. Nixon,

2222 01361

PAY ANY BANK PFG.
PEOPLES BANK
OF BILOXI
BILOXI, MISSISSIPPI
85-75 85-75

FEB 20 '84

PAY ANY BANK PEG FRB NEW ORLEANS
[illegible] FRB NEW ORLEANS 14-21
[illegible] CS 02-22-84 [illegible]536944

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For Deposit Only
WALTER L NIXON, Jr.
# 007-827-2

2222 76700

PAY ANY BANK PFG.
PEOPLES BANK
OF BILOXI
BILOXI, MISSISSIPPI
85-75 85-75

[illegible] 20 '84

PAY ANY BANK PEG FRB NEW ORLEANS
[illegible] FRB NEW ORLEANS 14-21
[illegible] 2100 CS 05-01-84 [illegible]

---

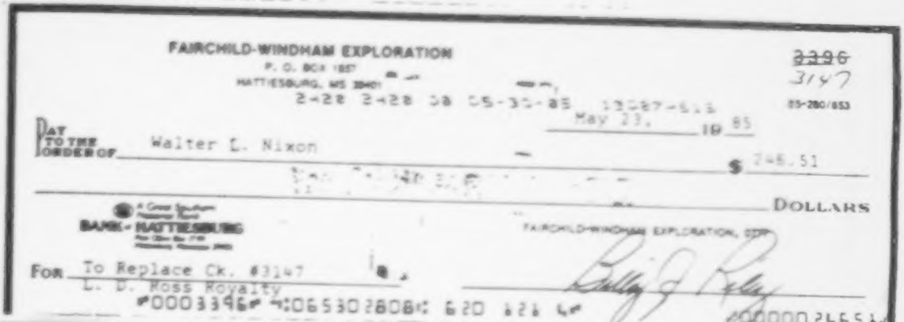
FOR DEPOSIT ONLY
Walter L. Nixon Jr
#007-827-2

1111 30359

PAY ANY BANK PFG.
PEOPLES BANK
OF BILOXI
BILOXI, MISSISSIPPI
85-75 85-75

JUL 12 '84

PAY ANY BANK PEG FRB NEW ORLEANS
[illegible] FRB NEW ORLEANS 14-21
[illegible] CS [illegible] 312-[illegible]



**FAIRCHILD-WINDHAM EXPLORATION**
P. O. BOX 1857
HATTIESBURG, MS 39401

~~3396~~
3147

2-28 2-28 08 05-30-85 13087-515

85-280/653

May 23, 19 85

PAY TO THE ORDER OF Walter L. Nixon $ 246.51

[illegible] DOLLARS

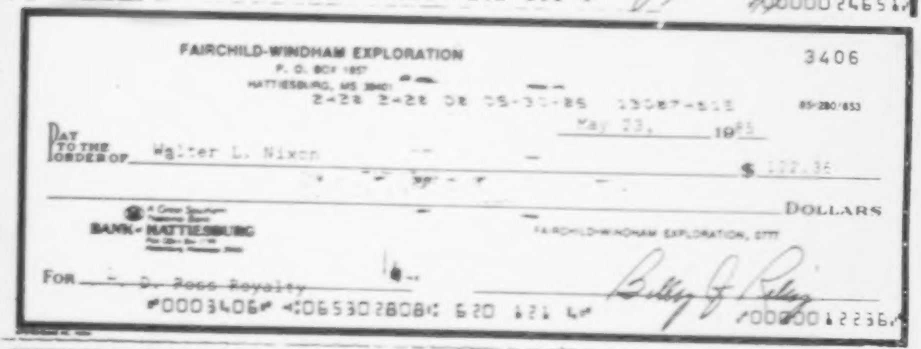
A Great Southern National Bank
BANK of HATTIESBURG

FAIRCHILD-WINDHAM EXPLORATION, ACCT

FOR To Replace Ck. #3147
L. D. Ross Royalty

Billy J. Riley

⑈0003396⑈ ⑆065302808⑆ 620 121 4⑈ ⑈0000024651⑈



**FAIRCHILD-WINDHAM EXPLORATION**
P. O. BOX 1857
HATTIESBURG, MS 39401

3406

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85-280/653

May 23, 19 85

PAY TO THE ORDER OF Walter L. Nixon $ 122.36

[illegible] DOLLARS

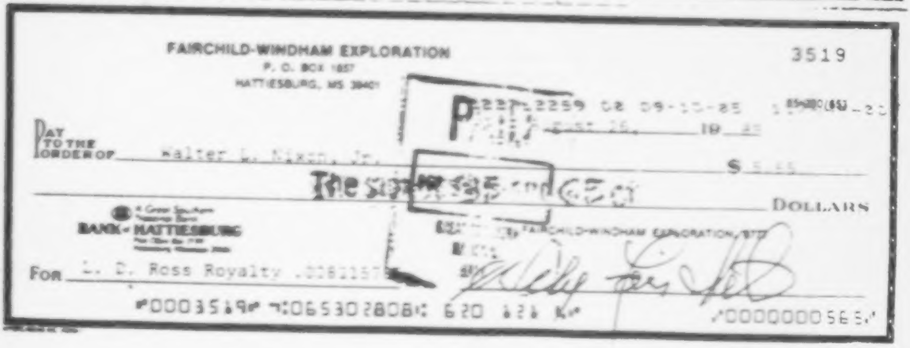
A Great Southern National Bank
BANK of HATTIESBURG

FAIRCHILD-WINDHAM EXPLORATION, ACCT

FOR L. D. Ross Royalty

Billy J. Riley

⑈0003406⑈ ⑆065302808⑆ 620 121 4⑈ ⑈0000012236⑈



**FAIRCHILD-WINDHAM EXPLORATION**
P. O. BOX 1857
HATTIESBURG, MS 39401

3519

2259-2259 08 09-10-85

85-280/653

August 26, 19 85

PAY TO THE ORDER OF Walter L. Nixon, Jr. $ 5.65

The sum [illegible] DOLLARS

A Great Southern National Bank
BANK of HATTIESBURG

FAIRCHILD-WINDHAM EXPLORATION, ACCT

FOR L. D. Ross Royalty .0081157

⑈0003519⑈ ⑆065302808⑆ 620 121 4⑈ ⑈0000000565⑈

COMMITTEE EXHIBIT NO. 11

| Date | Royalty Payments to Judge Nixon | Sub-Total of Royalties | Nixon Note Payments |
|---|---|---|---|
| 2/18/82 | $ 464.25 | | $1,000.00 |
| 2/19/82 | 5,941.01 | | 2,500.00 |
| 3/3/82 | 1,071.29 | $ 7,476.55 | 1,500.00 |
| 3/16/82 | | | 5,000.00 |
| 3/26/82 | 1,103.88 | | |
| 4/6/82 | 1.12 | | |
| 4/29/82 | 971.84 | | |
| 5/24/82 | 1,060.70 | | |
| 6/10/82 | 143.51 | | |
| 6/28/82 | 974.69 | | |
| 7/23/82 | 1,028.70 | | |
| 8/24/82 | 1,061.61 | | 1,271.43 |
| 9/9/82 | 10,093.40 | | 2,098.11 |
| 9/15/82 | 11.92 | 16,451.37 | 1,407.15 |
| 9/16/82 | | | 4,776.69 |
| 9/29/82 | 2,216.55 | | |
| 10/25/82 | 1,536.34 | | |
| 11/29/82 | 1,740.68 | | |
| 12/30/82 | 1,631.26 | | |
| 1/4/8(3) | 5.50 | | |
| 1/28/83 | 1,113.79 | | |
| 2/14/83 | 372.65 | | 522.19 |
| 2/28/83 | 1,316.22 | 9,932.99 | 522.19 |
| 3/1/83 | | | 1,044.38 |
| 3/28/83 | 1,736.78 | | |
| 4/22/83 | 1,327.38 | | |
| 5/9/83 | 3.69 | | |
| 5/23/83 | 1,238.20 | | |
| 6/23/83 | 1,449.87 | | |
| 7/13/83 | 4.27 | | |
| 7/25/83 | 938.02 | | |
| 8/26/83 | 878.90 | | |
| 9/26/83 | 925.20 | | |
| 11/11/83 | 595.05 | | |
| 11/30/83 | 572.49 | | |
| 12/13/83 | 156.37 | | |
| 12/28/83 | 813.70 | | |
| 1/27/84 | 891.61 | | |
| 2/10/84 | 89.81 | | |
| 2/29/84 | 783.82 | | |
| 3/30/84 | 532.26 | | |
| 4/18/84 | 5.48 | | |
| 4/27/84 | 564.88 | | |
| 5/24/84 | 726.21 | | |
| 7/5/84 | 428.56 | | |
| 7/27/84 | 928.34 | | |
| 7/30/84 | 975.18 | 16,566.07 | |

| Date | Royalty Payments to Judge Nixon | Sub-Total of Royalties | Nixon Note Payments |
|---|---|---|---|
| 8/20/84 | | | 951.10 |
| 8/29/84 | 927.13 | | |
| 9/28/84 | 849.45 | | |
| 10/4/84 | 7.92 | | |
| 10/23/84 | 705.20 | | |
| 11/28/84 | 964.76 | | |
| 12/31/84 | 2.29 | | |
| 12/31/84 | 1,056.75 | | |
| 1/28/85 | 1,079.37 | | |
| 2/12/85 | 177.43 | | |
| 3/1/85 | 1,053.16 | | |
| 3/22/85 | 991.00 | | |
| 4/15/85 | 3.25 | | |
| 4/22/85 | 963.74 | | |
| 5/23/85 | 246.51 | | |
| 5/23/85 | 122.36 | | |
| 5/24/85 | 896.55 | | |
| 7/2/85 | 299.19 | | |
| 7/24/85 | 712.14 | | |
| 8/22/85 | 581.05 | | |
| 8/26/85 | 5.65 | 11,644.90 | |
| | Grand total | $62,071.88 | $11,772.17 |
| | | - 11,772.17 | |
| | Net profit | $50,299.71 | |

| te | Royalty Payments to Judge Nixon | Sub-Total of Royalties | Nixon Note Payments |
|---|---|---|---|
| /82 | $ 464.25 | | $1,000.00 |
| /82 | 5,941.01 | | 2,500.00 |
| 82 | 1,071.29 | $ 7,476.55 | 1,500.00 |
| /82 | | | 5,000.00 |
| /82 | 1,103.88 | | |
| 82 | 1.12 | | |
| /82 | 971.84 | | |
| /82 | 1,060.70 | | |
| /82 | 143.51 | | |
| /82 | 974.69 | | |
| /82 | 1,028.70 | | |
| /82 | 1,061.61 | | |
| 82 | 10,093.40 | | 1,271.43 |
| /82 | 11.92 | 16,451.37 | 2,098.11 |
| /82 | | | 1,407.15 |
| /82 | 2,216.55 | | 4,776.69 |
| 5/82 | 1,536.34 | | |
| 9/82 | 1,740.68 | | |
| 0/82 | 1,631.26 | | |
| (3) | 5.50 | | |
| /83 | 1,113.79 | | |
| /83 | 372.65 | | |
| /83 | 1,316.22 | 9,932.99 | 522.19 |
| 83 | | | 522.19 |
| /83 | 1,736.78 | | 1,044.38 |
| /83 | 1,327.38 | | |
| 83 | 3.69 | | |
| /83 | 1,238.20 | | |
| /83 | 1,449.87 | | |
| /83 | 4.27 | | |
| /83 | 938.02 | | |
| /83 | 878.90 | | |
| /83 | 925.20 | | |
| 1/83 | 595.05 | | |
| 0/83 | 572.49 | | |
| /83 | 156.37 | | |
| /83 | 813.70 | | |
| /84 | 891.61 | | |
| /84 | 89.81 | | |
| /84 | 783.82 | | |
| /84 | 532.26 | | |
| /84 | 5.48 | | |
| /84 | 564.38 | | |
| /84 | 726.21 | | |
| | 428.56 | | |
| /84 | 929.34 | | |
| /84 | 975.18 | 16,566.07 | |

NIXON NOTES (PAYMENTS)

| Date | $2,000.00 Note | $4,500.00 Note | $3,000.00 Note |
|---|---|---|---|
| 3/16/82 | $1,000.00 | $2,500.00 | $1,500.00 |
| 9/16/82 | 1,271.43 (pd in full) | 2,098.11 | 1,407.15 |
|  | $2,271.43 |  |  |
| 3/1/83 |  | 522.19 (pd in full) | 522.19 (pd in full) |
|  |  | $5,120.30 | $3,429.34 |
| 8/20/84 |  | $951.10 |  |

August 20, 1984

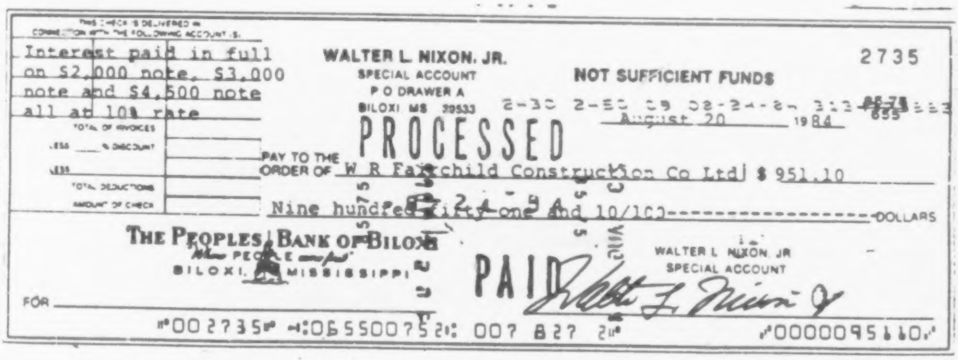
DEFENDANT'S EXHIBIT 24

Mr. Billy Riley
W. R. Fairchild Construction Company, Ltd.
P. O. Box 1357
Hattiesburg, MS 39401

Dear Mr. Riley:

I am in receipt of your July 31, 1984 letter informing me that an error was made in computing the amount of interest. As you requested I have checked my records; I find that the correct figure is $951.10 and enclose a check in that amount with a copy of my computation. If my computations are in error please let me know.

Yours very truly,



THIS CHECK IS DELIVERED IN CONNECTION WITH THE FOLLOWING ACCOUNT(S):
Interest paid in full on $2,000 note, $3,000 note and $4,500 note all at 10% rate
TOTAL OF INVOICES
LESS ___ % DISCOUNT
LESS
TOTAL DEDUCTIONS
AMOUNT OF CHECK

**WALTER L. NIXON, JR.**
SPECIAL ACCOUNT
P O DRAWER A
BILOXI MS 39533

2735

NOT SUFFICIENT FUNDS

85-75/655

August 20 1984

PROCESSED

PAY TO THE ORDER OF W R Fairchild Construction Co Ltd $ 951.10

Nine hundred fifty one and 10/100 ------------------ DOLLARS

THE PEOPLES BANK OF BILOXI
Where PEOPLE come first
BILOXI, MISSISSIPPI

WALTER L NIXON JR
SPECIAL ACCOUNT

PAID

Walter L. Nixon Jr

FOR

002735 065500752 007 827 2 0000095110

For Deposit Only
WALTER L NIXON, JR.

78581

85-75 85-75

---

WALTER L. NIXON, JR.
P.O. Box A - Biloxi, MS 39533

Special Account
The Peoples Bank of
Biloxi 91850

#007-827-2

85-75 85-75

FRB NEW ORLEANS

FB '83 22

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For Deposit Only
WALTER L. NIXON, JR.

007-827-2

PAY ANY BANK P.E.G.

85-75

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Only
NIXON, JR.

#007-827-2

1111 30967

PAY ANY BANK P.E.G.
BANK

85-75 85-75

For Deposit Only
Peoples Bank of
Biloxi
Walter L. Nixon Jr.
007-827-2

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PAY ANY BANK, P.E.G.
THE PEOPLES
BANK OF BILOXI
BILOXI, MISSISSIPPI
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For Deposit Only
Walter L Nixon Jr.
Spec Acct
007-827-2

5533 62453

85-75

PAY ANY BANK PEG
NEW ORLEANS FRB

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For Deposit Only
**WALTER L. NIXON, JR.**
Peoples Bank of Biloxi
Acct # 007-827-2

5533 70342

BILOXI
MISSISSIPPI
85-75

PAY ANY BANK PEG FRB NEW ORLEANS
FRB NEW ORLEANS

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For Deposit Only
**WALTER L. NIXON, JR.**
Special Acct
Peoples Bank of Biloxi
Acct # 007-827-2

85-75 85-75

COMMITTEE EXHIBIT NO. 12

WITNESS Bud Holmes

PAGES

JAN 31 1996

UNITED STATES DISTRICT COURT

Tom Scott REPORTER

GOVERNMENT
EXHIBIT
20

# 13
THURSDAY

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J. D. Baker ✓
8 00 Bank of H'burg ✓
8 15 Town House cleanup
8 30 radio
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BEST AVAILABLE COPY

COMMITTEE EXHIBIT NO. 13

STYLE OF CASE:

DIVISION: SOUTHERN

DEFENDANT'S EXHIBIT 30

CIVIL ACTION NO. S79-0211(R)
James L. Jackson
v.
Johns-Manville Sales Corp.,
Raybestos-Manhattan, Inc., and
H. K. Porter Company, Inc.

APPEARANCES:

FOR PLAINTIFF(S):

Danny E. Cupit
P. O. Box 22666
Jackson, MS 39205

Ransom P. Jones III
P. O. Box 1607
Pascagoula, MS 39567

Ron Motley
P. O. Box 365
Barnwell, S. C. 29812

F. Scott Baldwin
P. O. Drawer 1249
Marshall, Texas 75670

Richard F. Pate
P. O. Drawer 3066
Mobile, Alabama 36601

FOR DEFENDANT(S):

Roy C. Williams
Michael McElhaney
P. O. Box 787
Pascagoula, Ms. 39567
(Deft Johns-Manville)

Lively Wilson
3400 First National Towers
Louisville, Ky. 40202
(Deft Johns-Manville)

Robert G. Andre
Johns-Manville Sales Corp.
Ken Caryl Ranch
Denver, Colorado 80219
(Deft Johns-Manville)

PRE-TRIAL: Hours Minutes

MOTION: Hours Minutes

TRIAL: X COURT / / Hrs. Mins.

JURY / X /105 Hrs. 20 Mins.

ISSUE JOINED: 1-12-81

PLACE OF HOLDING COURT: Biloxi, MS
JUDGE(S) PRESIDING: Hon. Walter L. Nixon, Jr., Hon. John M. Roper
COURT REPORTER: Robert L. Daniels, Jr.

| | | | | |
|---|---|---|---|---|
| DATE(S): | May 12, 1982 | 11:15 a.m. to 1:15 p.m. | 2: | |
| | | 2:30 p.m. to 5:30 p.m. | 3: | 5: |
| ACTION TAKEN: | May 13, 1982 | 9:30 a.m. to 12: 15 p.m. | 2:45 | |
| | | 1:30 p.m. to 4:45 p.m. | 3:15 | 6: |
| | May 17, 1982 | 10:00 a.m. to 12:00 noon | 2: | |
| | | 1:30 p.m. to 6:00 p.m. | 4:30 | 6:30 |
| | May 18, 1982 | 9:15 a.m. to 12:30 p.m. | 3:15 | |
| | | 2:00 p.m. to 6:00 p.m. | 4: | 7:15 |
| | May 19, 1982 | 9:15 a.m. to 12:30 p.m. | 3:15 | |
| | | 1:45 p.m. to 6:00 p.m. | 4:15 | 7:30 |
| | May 20, 1982 | 9:15 a.m. to 12:15 p.m. | 3: | |
| | | 2:00 p.m. to 6:15 p.m. | 4:15 | 7:15 |
| | May 21, 1982 | 9:45 a.m. to 12:15 p.m. | 2:30 | |
| | | 2:00 p.m. to 4:30 p.m. | 2:30 | 5: |
| | May 24, 1982 | 9:15 a.m. to 12:30 p.m. | 3:15 | |
| | | 1:45 p.m. to 6:00 p.m. | 4:15 | 7:30 |
| DEPUTY CLERK | May 25, 1982 | 9:45 a.m. to 12:00 noon | 2:15 | |
| | | 1:30 p.m. to 6:15 p.m. | 4:45 | 7: |

STYLE OF CASE: DIVISION:

APPEARANCES:

FOR PLAINTIFF(S):

Michael Rowland
707 Gay Street, SW
Knoxville, Tenn. 37902

FOR DEFENDANT(S):

Richard L. Forman
W. G. Watkins
P. O. Box 22567
Jackson, MS 39205
(Deft Owens-Illinois)

W. Swan Yerger
David Dogan
1030 Capital Towers
Jackson, MS 39201 (Deft Raybestos-Manhattan

Walter W. Eppes
John Howell
P. O. Box 3311
Meridian, MS 39301
(Deft H. K. Porter)

HEARING ON /___/

PRE-TRIAL: Hours Minutes MOTION: Hours Minutes

TRIAL: COURT /___/ Hrs. Mins. JURY /___/ Hrs. Mins.

ISSUE JOINED:

PLACE OF HOLDING COURT:

JUDGE(S) PRESIDING:

COURT REPORTER:

| | | | | |
|---|---|---|---|---|
| DATE(S): | May 26, 1982 | 9:15 a.m. to 12:15 p.m. | 3: | |
| ACTION TAKEN: | | 2:00 p.m. to 7:00 p.m. | 5: | 8: |
| | May 27. 1982 | 8:30 a.m. to 12:00 noon | 3:30 | |
| | | 1:00 p.m. to 6:30 p.m. | 5:30 | 9: |
| | May 28. 1982 | 9:15 a.m. to 12:15 p.m. | 3: | |
| | | 1:45 p.m. to 5:30 p.m. | 4:15 | 7:15 |
| | May 29. 1982 | 10:30 a.m. to 12:15 p.m. | 1:45 | |
| | | 1:45 p.m. to 5:00 p.m. | 3:15 | 5: |
| | May 31. 1982 | 10:30 a.m. to 1:00 p.m. | 2:30 | |
| | | 2:30 p.m. to 5:00 p.m. | 2:30 | 5: |
| | June 1. 1982 | 11:00 a.m. to 12:30 p.m. | 1:30 | |
| | | 2:30 p.m. to 5:00 p.m. | 2:30 | 4: |
| | June 2. 1982 | 8:30 a.m. to 1:30 p.m. | 5: | |
| | | 2:30 p.m. to 6:00 p.m. | 3:30 | 8:30 |
| | June 3, 1982 | 2:30 p.m. to 2:45 p.m. | | :15 |

Jury deliberated from 5:15 p.m. to 7:45 p.m. on June 2, 1982 and from 8:30 a.m. to 2:30 p.m. on June 3, 1982.

SEE ATTACHED JURY VERDICT AND SPECIAL INTERROGATORIES TO JURY.

Jeanne Simpson
Deputy Clerk

STYLE OF CASE: DIVISION: Southern

Civil Action No. S79-0211(R)
James L. Jackson
vs
Johns Manville Sales Corp, etal

APPEARANCES:

| FOR PLAINTIFF(S): | FOR DEFENDANT(S): |
|---|---|
| Danny Cupit | Roy Williams |
| Ransom Jones | Mike McElhaney |
| Ron Motley | Rick Fassman |
| | W. B. Watkins |
| | Walter Eppes |
| | John Howell |
| | Susan Yerger |
| | David Hogan |

HEARING ON ☐ Pltf's motion in limine admitting into evidence Pltf's Exhibits 872 and 894 which are summary exhibits

PRE-TRIAL: Hours Minutes ☒ MOTION: 1 Hours 30 Minutes

TRIAL: COURT ☐ Hrs. Mins. JURY ☐ Hrs. Mins.

ISSUE JOINED:

PLACE OF HOLDING COURT: Biloxi, Ms.
JUDGE(S) PRESIDING: Hon. Walter L. Nixon Jr., Hon. John M. Roper
COURT REPORTER:
DATE(S): May 14, 1982 - 9:00AM - 10:30 A.M.

ACTION TAKEN:

Court ruled that if they are admissible and have been made available to counsel, Summaries may be used under Rule 1006 - Copies must be in the courtroom.

DEPUTY CLERK
J Simpson

STYLE OF CASE: DIVISION: Southern

Civil Action S79-0211 (R)
James L Jackson
vs.
Johns-Manville Sales Corp., etal

APPEARANCES:

| FOR PLAINTIFF(S): | FOR DEFENDANT(S): |
|---|---|
| Danny Cupit | Roy Williams |
| Ransom Jones | Mike McElhaney |
| Ron Motley | Rick Forman |
| | W. G. Watkins |
| | Walter Epps |
| | John Howell |
| | Susan Yerger |
| | David Dogan |

HEARING ON ☒

Pltfs Motion in Limine to Suppress any medical reports of treatment of pltf by V.A. in 1947.

PRE-TRIAL: Hours Minutes MOTION: Hours Minutes

TRIAL: COURT ☐ Hrs. Mins. JURY ☐ , Hrs. Mins.

ISSUE JOINED:

PLACE OF HOLDING COURT: Biloxi, Ms
JUDGE(S) PRESIDING: Hon Walter L Nixon, Jr, Hon John M Roper
COURT REPORTER:
DATE(S): May 14, 1982

ACTION TAKEN:

Reserved Ruling. Court will rule at appropriate time

DEPUTY CLERK

J Simpson

STYLE OF CASE: DIVISION: Southern

Civil Action S79-0211 (R)
James L Jackson
vs
Johns-Manville Sales Corp, et al

APPEARANCES:

| FOR PLAINTIFF(S): | FOR DEFENDANT(S): |
|---|---|
| Danny Cupit | Ray Williams |
| Ransom Jones | Michael McElhaney |
| Ron Motley | Rick Forman |
| | W.G. Watkins |
| | Walter Epps |
| | John Howell |
| | Swan Yerger |
| | David Dogan |

HEARING ON / X /
(1) Plef's Motion to Limit Testimony of L.T. Chapin.
(2) Defts' Motion to Prohibit Live Testimony of L.T. Chapin

PRE-TRIAL: Hours Minutes MOTION: Hours Minutes

TRIAL: COURT / / Hrs. Mins. JURY / / . Hrs. Mins.

ISSUE JOINED:

PLACE OF HOLDING COURT: Biloxi, Ms.
JUDGE(S) PRESIDING: Hon Walter L. Nixon Jr., Hon John M. Roper
COURT REPORTER:
DATE(S): May 14, 1982

ACTION TAKEN: (1) Granted: Court will limit each side + will see how testimony proceeds before setting time. Will arrange so he can testify last one day + first next day.

(2) Denied. Court will permit live testimony - Plefs may not mention pleff's illness but defts may - Scope of cross exam limited to direct exam. Court will permit defts to use videotape of Chapin + whomever else they wish.

DEPUTY CLERK
J Simpson

STYLE OF CASE: DIVISION: Southern
Civil Action No. S79-0211(R)
James L Jackson
vs
Johns-Manville Sales Corp.

APPEARANCES:

| FOR PLAINTIFF(S): | FOR DEFENDANT(S): |
|---|---|
| Danny Cupit | Roy Williams |
| Ransom Jones | Mike McElhaney |
| Ron Matkey | Rick Farmer |
| | W.G. Watkins |
| | Walter Eppes |
| | John Howell |
| | Susan Yerger |
| | David Dogan |

HEARING ON ☐ (1) Deft's Motion to prohibit use of documents not yet admitted into evidence during opening statements

PRE-TRIAL: Hours Minutes MOTION: Hours Minutes

TRIAL: COURT ☐ Hrs. Mins. JURY ☐ Hrs. Mins.

ISSUE JOINED:

PLACE OF HOLDING COURT: Biloxi, Ms
JUDGE(S) PRESIDING: Hon Walter L Nixon Jr. Hon John M Roper
COURT REPORTER:
DATE(S): May 14, 1982

ACTION TAKEN:

Motion Denied. Court will permit and will instruct jury they are not to be considered evidence.

DEPUTY CLERK
J Simpson

MOTIONS TO BE HEARD FRIDAY, MAY 14, 1982 - CIVIL ACTION NO. S79-0211(R)

③ 1. Pltf's Motion in Limine to suppress any medical reports of treatment of pltf by V.A. in 1947. Will rule at appropriate time.

④ 2. Pltf's Motion to Supplement Exhibit List.

① 3. Pltf's Motion in Limine admitting into evidence pltf's Exhibits 892 and 894. Ps are ~~to~~ have exhibits available ~~to~~ Ds

⑤ 4. Motion in Limine to Limit the Testimony of L. T. Chapin
Ct will permit him to testify. But only

④ 5. Motion of deft Johns-Manville Sales Corp. to prohibit live testimony of L. T. Chapin may cross exam as to limitation of direct.

6. Motion in Limine of Johns-Manville Sales Corp. to prohibit pltf from using parts or portions of deposition of William R. Brach taken in John M. Goff et al v. Johns-Manville, et al and John P. Flynn, et al v. Johns-Manville.

8. Motion in Limine of Johns-Manville to prohibit pltf from using parts or portions of deposition of William R. Brach taken in Glenn H. Adams, et ux v. The Celotex Corp.

9. Motion in Limine of Johns-Manville to prohibit pltf from using parts or portions of deposition of Franklin Swersky

10. Motion in Limine of Johns-Manville to prohibit pltf from reading to the jury comments of counsel contained in deposition of Wilbur Ruff taken 4/9/79.

11) Ct. will notify the Mobile doctors as to enforcement of subpoena but whoever called them will subject them to direct etc.

P-1 ③ Court allows the exhibit to be admitted, but the copies of the summary documents must be available in court in order to refer in case of questions.

P-2 ④- Chapin will describe page + block emulation, and will describe type of result i.e. bars, histograms, etc.
Δ thinks that π is only bringing Chapin to bring a dying man and put him on the stand
Δ thinks that the Court already provided for his testimony in the form of a video deposition.
π says that they have at all times intended to bring Chapin if he was healthy.
Ct will not prohibit the calling of a witness. The Ct will scrutinize questions re: his illness, and why he is ill.
Δ thinks that after an hour Chapin becomes discolored and starts to look sick.

Court will permit Chapman to testify. It may not bring out the question of his [illegible] he may do it in the form of argument. The Ct will leave to Crown [illegible] when it comes to it as far as establishing Chapman's listing. Crown will be limited however in scope of subject area dealt with in chart:

Re: [illegible] Wright's affidavit.
Ct will [illegible] [illegible] but Ct will try to accommodate the Dr as much as possible

---

P-3 ①. V.A. Reports. & 1947 Reports

Ct will rule on admissibility of document at appropriate time.

---

P-4 ②. Exhibit list :

May be amended upon examination. Discuss then any problems that remain there.

COMMITTEE EXHIBIT NO. 14

4 MEDICAL BOULEVARD
HATTIESBURG, [illegible]
PHONE [illegible]

**BENNETT V. YORK, D.D.S., P.A.**
**STEPHEN COCKERHAM, D.D.S.**
DIPLOMATES AMERICAN BOARD OF
ORAL AND MAXILLOFACIAL SURGERY

308 SOUTH THIRTEENTH AVENUE
LAUREL, MISSISSIPPI 39440
PHONE 649-3140

# ORAL SURGERY HEALTH QUESTIONNAIRE

PLEASE PRINT THE FOLLOWING

☑ MARRIED AGE 53
☐ SINGLE DATE OF BIRTH 12/12/21
☐ DIVORCED
☐ WIDOWED WEIGHT 5'10"

PATIENT'S NAME NIXON WALTER L.
(LAST) (FIRST) (MIDDLE INITIAL)

RESIDENCE ADDRESS 1204 [illegible] RD CITY Ocean Springs ZIP CODE 39564

RESIDENCE PHONE 601-875-2082 BUSINESS PHONE 601-4364317

REFERRED BY ______ PHYSICIAN'S NAME ______

OCCUPATION U.S. DISTRICT JUDGE INSURANCE BLUE CROSS-FEDERAL-1+10 OF

OFFICE POLICY ON PROFESSIONAL FEES — All services on cash basis unless financial arrangements have been made prior to surgery

PERSON RESPONSIBLE FOR THIS ACCOUNT

NAME SELF RELATIONSHIP ______

PLACE OF EMPLOYMENT ______ BUSINESS ADDRESS ______

OCCUPATION ______ BUSINESS PHONE ______

PLEASE ANSWER ALL QUESTIONS CIRCLE

1. Do you now have a sore throat or cold? ______ [✓ No] Yes
2. Under the care of Physician? Why? ______ [✓ No] Yes
3. Previous admissions to hospital? Why? REMOVAL OF MIXED BENIGN TUMOR OF RT ~~PAROTID~~ DEEP PAROTID GLAND Parotid No [✓ Yes]
4. Have you ever been seriously ill? ______ [✓ No] Yes
5. Taking any medicines? What? FOR JOINT PAIN ? No Yes
6. Do you now take, or have you in the past taken Steroids - (Cortisone) ______ No [✓ Yes]
7. Allergic to ANY medicines? (i.e., penicillin, codeine, aspirin, etc.) What? ______ [✓ No] Yes
8. Have you had excessive bleeding before? ______ [✓ No] Yes
9. Have you had: (Circle)

| | |
|---|---|
| High blood pressure | Chest pains |
| Stroke | Glaucoma |
| Ankle swelling | Rheumatic fever |
| Heart murmur | Shortness of breath |
| Asthma | Epilepsy |
| Diabetes | Kidney condition |
| Lung disease | Jaundice or hepatitis |
| Anemia | Psychiatric treatment |
| Radiation treatment | Venereal disease |

10. (Women) Are you pregnant now? ______ No Yes
11. Do you wear contact lens? ______ [✓ No] Yes
12. How do you rate your overall health? (Circle) POOR FAIR [✓ GOOD]

## PERMIT FOR OPERATION

I, the undersigned, hereby certify that I have full knowledge of the type of operation to be performed on me or my above named dependent, and hereby give my consent for all necessary surgery and the anesthetic or sedation of the doctor's choice.

PATIENT'S SIGNATURE ______ DATE ______

WITNESS ______

~~11 A.M.~~ ~~3 P.M.~~ 3 P.M.

Date 5-14-82

Name Judge Walter Nixon Phone Biloxi

Procedure

Anesthesia Age

Referred By

X-Rays PANOGRAPH TAKEN

Physician Phone ☐

Hospital Aneath. ☐

Remarks Carroll Ingram 545-2211 W.
545 7548 R.

---

**BENNETT V. YORK, D.D.S.,P.A.**
**J. STEPHEN COCKERHAM, D.D.S.**
PRACTICE LIMITED TO ORAL & MAXILLOFACIAL SURGERY
TELEPHONE 264-7611 4 MEDICAL BLVD. HATTIESBURG, MISS. 39401
TELEPHONE 649-3148 325 SOUTH 13TH AVE. LAUREL, MISS. 39440
BENNETT V. YORK, D.D.S.
DEA NO. AY3465716
JOHN S. COCKERHAM, D.D.S.
DEA NO. AC7468538

For Judge Walter Nixon Date 6-15-82
Address 1204 Iola Rd Ocean Springs MS

℞

DECADRON TABS 0.75 mg.

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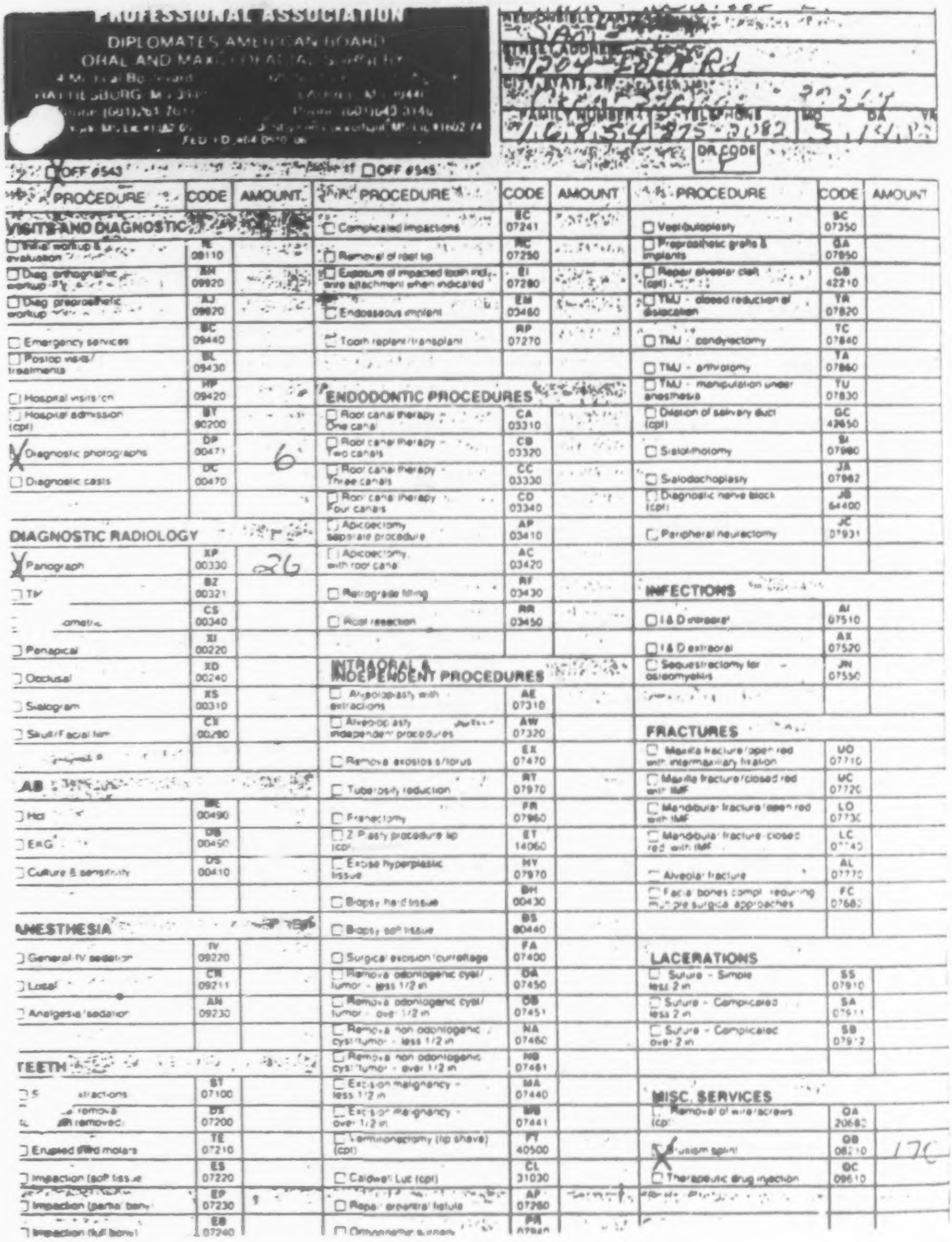


**PROFESSIONAL ASSOCIATION**
DIPLOMATES AMERICAN BOARD
ORAL AND MAXILLOFACIAL SURGERY
4 Medical Boulevard
HATTIESBURG, MS [illegible]
Phone (601)261-76[illegible]
[illegible] MS Lic #1182 0[illegible]
LAUREL, MS 39440
Phone (601)649-3146
[illegible] Laurel MS Lic #1602 74
FED I.D. #64 0910 [illegible]

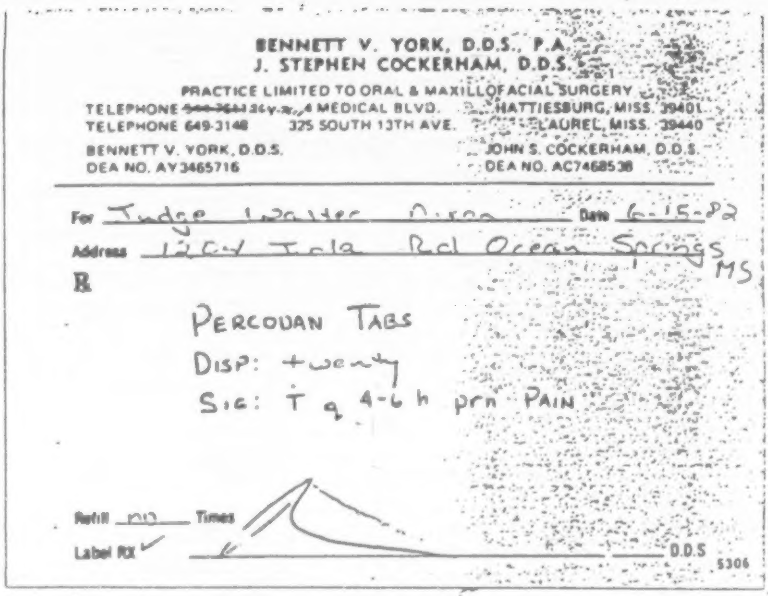
RESPONSIBLE PARTY [redacted]
STREET ADDRESS 1504 [illegible] Rd
CITY, STATE, ZIP [illegible]
FAMILY NUMBER 16854 TELEPHONE 875-5082 MO 5 DA 13 YR [illegible]
DR CODE [illegible]

☒ OFF #543 ☐ OFF #545

| PROCEDURE | CODE | AMOUNT |
|---|---|---|
| **VISITS AND DIAGNOSTIC** | | |
| ☐ Initial workup & evaluation | IE<br>08110 | |
| ☐ Diag orthognathic workup | AH<br>09920 | |
| ☐ Diag preprosthetic workup | AJ<br>09870 | |
| ☐ Emergency services | UC<br>09440 | |
| ☐ Postop visits/treatments | BL<br>09430 | |
| ☐ Hospital visits/cn | HP<br>09420 | |
| ☐ Hospital admission (cpt) | BT<br>90200 | |
| ☒ Diagnostic photographs | DP<br>00471 | 6 |
| ☐ Diagnostic casts | DC<br>00470 | |
| | | |
| **DIAGNOSTIC RADIOLOGY** | | |
| ☒ Panograph | XP<br>00330 | 26 |
| ☐ TM | BZ<br>00321 | |
| ometric | CS<br>00340 | |
| ☐ Periapical | XI<br>00220 | |
| ☐ Occlusal | XD<br>00240 | |
| ☐ Sialogram | XS<br>00310 | |
| ☐ Skull/Facial film | CX<br>00290 | |
| | | |
| **LAB** | | |
| ☐ Hct | [illegible]<br>00490 | |
| ☐ EKG | DB<br>00450 | |
| ☐ Culture & sensitivity | DS<br>00410 | |
| | | |
| **ANESTHESIA** | | |
| ☐ General IV sedation | IV<br>09220 | |
| ☐ Local | CN<br>09211 | |
| ☐ Analgesia/sedation | AN<br>09230 | |
| | | |
| **TEETH** | | |
| ☐ S[illegible] extractions | ST<br>07100 | |
| [illegible] removal [illegible] removed | DX<br>07200 | |
| ☐ Erupted third molars | TE<br>07210 | |
| ☐ Impaction (soft tissue | ES<br>07220 | |
| ☐ Impaction (partial bony | EP<br>07230 | |
| ☐ Impaction (full bony) | EB<br>07240 | |

| PROCEDURE | CODE | AMOUNT |
|---|---|---|
| ☐ Complicated impactions | EC<br>07241 | |
| ☐ Removal of root tip | RC<br>07250 | |
| ☐ Exposure of impacted tooth incl. wire attachment when indicated | EI<br>07280 | |
| ☐ Endosseous implant | EM<br>03460 | |
| ☐ Tooth replant/transplant | RP<br>07270 | |
| | | |
| **ENDODONTIC PROCEDURES** | | |
| ☐ Root canal therapy – One canal | CA<br>03310 | |
| ☐ Root canal therapy – Two canals | CB<br>03320 | |
| ☐ Root canal therapy – Three canals | CC<br>03330 | |
| ☐ Root canal therapy – Four canals | CD<br>03340 | |
| ☐ Apicoectomy separate procedure | AP<br>03410 | |
| ☐ Apicoectomy with root canal | AC<br>03420 | |
| ☐ Retrograde filling | RF<br>03430 | |
| ☐ Root resection | RR<br>03450 | |
| | | |
| **INTRAORAL & INDEPENDENT PROCEDURES** | | |
| ☐ Alveoloplasty with extractions | AE<br>07310 | |
| ☐ Alveoloplasty independent procedures | AW<br>07320 | |
| ☐ Remove exostosis/torus | EX<br>07470 | |
| ☐ Tuberosity reduction | RT<br>07970 | |
| ☐ Frenectomy | FR<br>07960 | |
| ☐ Z Plasty procedure lip (cpt) | ET<br>14060 | |
| ☐ Excise hyperplastic tissue | HY<br>07970 | |
| ☐ Biopsy hard tissue | BH<br>00430 | |
| ☐ Biopsy soft tissue | BS<br>00440 | |
| ☐ Surgical excision/curettage | FA<br>07400 | |
| ☐ Remove odontogenic cyst/tumor – less 1/2 in | OA<br>07450 | |
| ☐ Remove odontogenic cyst/tumor – over 1/2 in | OB<br>07451 | |
| ☐ Remove non odontogenic cyst/tumor – less 1/2 in | NA<br>07460 | |
| ☐ Remove non odontogenic cyst/tumor – over 1/2 in | NB<br>07461 | |
| ☐ Excision malignancy – less 1/2 in | MA<br>07440 | |
| ☐ Excision malignancy – over 1/2 in | MB<br>07441 | |
| ☐ Vermilionectomy (lip shave) (cpt) | PT<br>40500 | |
| ☐ Caldwell Luc (cpt) | CL<br>31030 | |
| ☐ Repair oroantral fistula | AP<br>07260 | |
| ☐ Orthognathic surgery | PR<br>0794 | |

| PROCEDURE | CODE | AMOUNT |
|---|---|---|
| ☐ Vestibuloplasty | SC<br>07350 | |
| ☐ Preprosthetic grafts & implants | GA<br>07950 | |
| ☐ Repair alveolar cleft (cpt) | GB<br>42210 | |
| ☐ TMJ – closed reduction of dislocation | TR<br>07820 | |
| ☐ TMJ – condylectomy | TC<br>07840 | |
| ☐ TMJ – arthrotomy | TA<br>07860 | |
| ☐ TMJ – manipulation under anesthesia | TU<br>07830 | |
| ☐ Dilation of salivary duct (cpt) | GC<br>42650 | |
| ☐ Sialolithotomy | SI<br>07980 | |
| ☐ Sialodochoplasty | JA<br>07982 | |
| ☐ Diagnostic nerve block (cpt) | JB<br>64400 | |
| ☐ Peripheral neurectomy | JC<br>07931 | |
| | | |
| **INFECTIONS** | | |
| ☐ I & D intraoral | AI<br>07510 | |
| ☐ I & D extraoral | AX<br>07520 | |
| ☐ Sequestrectomy for osteomyelitis | JN<br>07550 | |
| | | |
| **FRACTURES** | | |
| ☐ Maxilla fracture/open red with intermaxillary fixation | UO<br>07710 | |
| ☐ Maxilla fracture/closed red with IMF | UC<br>07720 | |
| ☐ Mandibular fracture/open red with IMF | LO<br>07730 | |
| ☐ Mandibular fracture/closed red with IMF | LC<br>07740 | |
| ☐ Alveolar fracture | AL<br>07770 | |
| ☐ Facial bones compl. requiring multiple surgical approaches | FC<br>07680 | |
| | | |
| **LACERATIONS** | | |
| ☐ Suture – Simple less 2 in | SS<br>07910 | |
| ☐ Suture – Complicated less 2 in | SA<br>07911 | |
| ☐ Suture – Complicated over 2 in | SB<br>07912 | |
| | | |
| **MISC. SERVICES** | | |
| ☐ Removal of wire/screws (cpt) | QA<br>20680 | |
| ☒ Bruxism splint | QB<br>08210 | 170 |
| ☐ Therapeutic drug injection | QC<br>09610 | |
| | | |
| | | |



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For Judge Walter Nixon Date 6-15-82
Address 1204 Iola Rd Ocean Springs MS

℞

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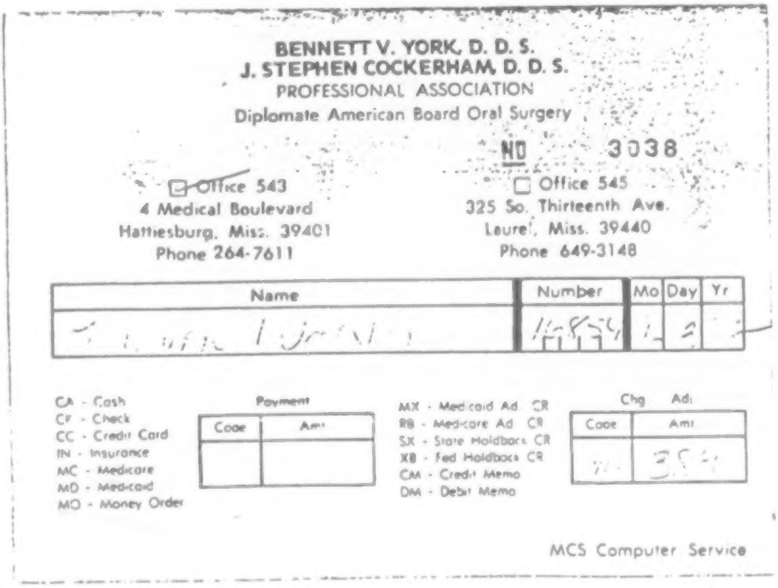

**BENNETT V. YORK, D. D. S.**
**J. STEPHEN COCKERHAM, D. D. S.**
PROFESSIONAL ASSOCIATION
Diplomate American Board Oral Surgery

NO 3038

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4 Medical Boulevard
Hattiesburg, Miss. 39401
Phone 264-7611

☐ Office 545
325 So. Thirteenth Ave.
Laurel, Miss. 39440
Phone 649-3148

| Name | Number | Mo | Day | Yr |
|---|---|---|---|---|
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |

CA - Cash
CK - Check
CC - Credit Card
IN - Insurance
MC - Medicare
MD - Medicaid
MO - Money Order

Payment

| Code | Amt |
|---|---|
| | |

MX - Medicaid Ad CR
RB - Medicare Ad CR
SX - State Holdback CR
XB - Fed Holdback CR
CM - Credit Memo
DM - Debit Memo

Chg Adj

| Code | Amt |
|---|---|
| [illegible] | [illegible] |

MCS Computer Service

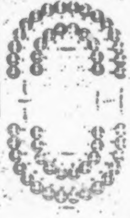
| PROCEDURE | CODE | AMOUNT |
|---|---|---|
| **VISITS AND DIAGNOSTIC** | | |
| ☐ Initial workup & evaluation | IE<br>00110 | |
| ☐ Diag. orthognathic workup | AH<br>09920 | |
| ☐ Diag. preprosthetic workup | AJ<br>09920 | |
| ☐ Emergency services | BC<br>09440 | |
| ☐ Postop visits/treatments | BL<br>09430 | |
| ☐ Hospital visits/cn | HP<br>09420 | |
| ☐ Hospital admission (cpt) | BT<br>90200 | |
| ☐ Diagnostic photographs | DP<br>00471 | |
| ☐ Diagnostic casts | DC<br>00470 | |
| | | |
| **DIAGNOSTIC RADIOLOGY** | | |
| ☐ Panograph | EP<br>00330 | |
| ☐ TMJ | BZ<br>00321 | |
| ☐ Cephalometric | CS<br>00340 | |
| ☐ Periapical | XI<br>00720 | |
| ☐ Occlusal | XD<br>00240 | |
| ☐ Sialogram | XS<br>00310 | |
| ☐ Skull/Facial film | CX<br>00290 | |
| | | |
| **LAB** | | |
| ☐ Hct | HE<br>00490 | |
| ☒ EKG | DK<br>00490 | 12 |
| ☐ Culture & sensitivity | DS<br>00410 | |
| | | |
| **ANESTHESIA** | | |
| ☒ General IV sedation | IV<br>09220 | 55 |
| ☐ Local | CN<br>09211 | |
| ☐ Analgesia/sedation | AN<br>09230 | |
| | | |
| **TEETH** | | |
| ☐ Simple extractions | ST<br>07130 | |
| ☐ Surgical removal (total teeth removed) | DR<br>07230 | |
| ☐ Erupted third molars | TE<br>07210 | |
| ☐ Impaction (soft tissue) | ES<br>07220 | |
| ☐ Impaction (partial bony) | EP<br>07230 | |
| ☐ Impaction (full bony) | EB<br>07240 | |

| PROCEDURE | CODE | AMOUNT |
|---|---|---|
| ☒ Complicated impactions | EC<br>07241 | 120 |
| ☐ Removal of root tip | RC<br>07250 | |
| ☐ Exposure of impacted tooth incl. wire attachment when indicated | EI<br>07280 | |
| ☐ Endosseous implant | EM<br>03460 | |
| ☐ Tooth replant/transplant | RP<br>07270 | |
| | | |
| **ENDODONTIC PROCEDURES** | | |
| ☐ Root canal therapy - One canal | CA<br>03310 | |
| ☐ Root canal therapy - Two canals | CB<br>03320 | |
| ☐ Root canal therapy - Three canals | CC<br>03330 | |
| ☐ Root canal therapy - Four canals | CD<br>03340 | |
| ☐ Apicoectomy, separate procedure | AP<br>03410 | |
| ☐ Apicoectomy, with root canal | AC<br>03420 | |
| ☐ Retrograde filling | RF<br>03430 | |
| ☐ Root resection | RR<br>03450 | |
| | | |
| **INTRAORAL & INDEPENDENT PROCEDURES** | | |
| ☐ Alveoloplasty with extractions | AE<br>07310 | |
| ☐ Alveoloplasty, independent procedures | AW<br>07320 | |
| ☐ Removal exostoses/torus | EX<br>07470 | |
| ☐ Tuberosity reduction | RT<br>07970 | |
| ☐ Frenectomy | FR<br>07960 | |
| ☐ Z-Plasty procedure-lip (cpt) | ET<br>14060 | |
| ☐ Excise hyperplastic tissue | HY<br>07970 | |
| ☐ Biopsy-hard tissue | BH<br>00430 | |
| ☐ Biopsy-soft tissue | BS<br>00440 | |
| ☐ Surgical excision/curettage | FA<br>07400 | |
| ☐ Removal odontogenic cyst/tumor - less 1/2 in | OA<br>07450 | |
| ☐ Removal odontogenic cyst/tumor - over 1/2 in | OB<br>07451 | |
| ☐ Removal non-odontogenic cyst/tumor - less 1/2 in | NA<br>07460 | |
| ☐ Removal non-odontogenic cyst/tumor - over 1/2 in | NB<br>07461 | |
| ☐ Excision malignancy - less 1/2 in | MA<br>07440 | |
| ☐ Excision malignancy - over 1/2 in | MB<br>07441 | |
| ☐ Vermilionectomy (lip shave) (cpt) | PY<br>40500 | |
| ☐ Caldwell Luc (cpt) | CL<br>31030 | |
| ☐ Repair oroantral fistula | AF<br>07260 | |
| ☐ Orthognathic surgery | PR<br>07940 | |

| PROCEDURE | CODE | AMOUNT |
|---|---|---|
| ☐ Vestibuloplasty | BC<br>07350 | |
| ☐ Preprosthetic grafts & implants | GA<br>07950 | |
| ☐ Repair alveolar cleft (cpt) | GB<br>42210 | |
| ☐ TMJ - closed reduction of dislocation | TR<br>07820 | |
| ☐ TMJ - condylectomy | TC<br>07840 | |
| ☐ TMJ - arthrotomy X | TA<br>07860 | |
| ☐ TMJ - manipulation under anesthesia | TU<br>07830 | |
| ☐ Dilation of salivary duct (cpt) | GC<br>42650 | |
| ☐ Sialolithotomy | SI<br>07980 | |
| ☐ Sialodochoplasty | JA<br>07982 | |
| ☐ Diagnostic nerve block (cpt) | JB<br>64400 | |
| ☐ Peripheral neurectomy | JC<br>07931 | |
| | | |
| **INFECTIONS** | | |
| ☐ I & D intraoral | AI<br>07510 | |
| ☐ I & D extraoral | AX<br>07520 | |
| ☐ Sequestrectomy for osteomyelitis | JN<br>07550 | |
| | | |
| **FRACTURES** | | |
| ☐ Maxilla fracture/open red with intermaxillary fixation | UO<br>07710 | |
| ☐ Maxilla fracture/closed red with IMF | UC<br>07720 | |
| ☐ Mandibular fracture/open red with IMF | LO<br>07730 | |
| ☐ Mandibular fracture/closed red with IMF | LC<br>07740 | |
| ☐ Alveolar fracture | AL<br>07770 | |
| ☐ Facial bones compl. requiring multiple surgical approaches | FC<br>07680 | |
| | | |
| **LACERATIONS** | | |
| ☐ Suture - Simple less 2 in | SS<br>07910 | |
| ☐ Suture - Complicated less 2 in | SA<br>07911 | |
| ☐ Suture - Complicated over 2 in | SB<br>07912 | |
| | | |
| **MISC. SERVICES** | | |
| ☐ Removal of wire/screws (cpt) | QA<br>20680 | |
| ☐ Bruxism splint | QB<br>[illegible] | |
| ☐ Therapeutic drug injection | QC<br>09610 | |
| | | |
| | | |
| **TOTAL CHARGES** | | 187 00 |

| Teeth # or Letter | DIAGNOSIS |
|---|---|
| | |
| | |
| | |
| | |

IDENTIFY MISSING TEETH WITH "X"



CASH ☐ CA
CHECK ☐ CK
CHARGE CARD ☐ CC
MONEY ORDER ☐ MO

MEDICARE ☐ MC
MEDICAID ☐ MC
INSURANCE ☐ IN

| PAYMENT | CODE | PAYMENT AMOUNT |
|---|---|---|
| | | |

Signature Date

I AUTHORIZE RELEASE OF ANY INFORMATION RELATING TO THIS CLAIM.

Signature

I HEREBY AUTHORIZE PAYMENT DIRECTLY TO THE SAID DOCTOR OF ANY BENEFITS DUE TO ME FOR SURGICAL SERVICES RENDERED. I UNDERSTAND THAT I AM RESPONSIBLE FOR ANY AMOUNT NOT COVERED BY MY INSURANCE COMPANY

(SIGN INSURED PERSON)

IMPORTANT: TO FILE YOUR INSURANCE CLAIM ATTACH THIS FORM TO YOUR INSURANCE FORM AND MAIL TO YOUR INSURANCE COMPANY.

PRACTICE LIMITED TO PERIODONTICS
LOWERY A. FALER, D.M.D., P.A.
NUMBER 9 • MEDICAL BOULEVARD
TELEPHONE 264-2424
HATTIESBURG, MISSISSIPPI 39401-5680

## PERIODONTAL EVALUATION REPORT

PATIENTS NAME: Judge Nixon REFERRED BY: York DATE: 6/24/82

PAST DENTAL HISTORY: regular PREVIOUS PERIO TX.:

CHIEF COMPLAINT: some sensitivity on lower left, bad tartar

PERIODONTAL EXAMINATION AND EVALUATION:

This patient has several over-contoured crowns. The soft tissues are inflammed. He has no severe bone loss. My impression is that he needs conservative periodontal treatment consisting of oral hygiene instructions, occlusal adjustment, dental debridement, and periodic re-evaluation. There are several crowns that need replacing.

OCCLUSAL ANALYSIS: prematurities on right, balancing contacts left/ride

DIAGNOSIS: generalized gingivitis, localized mild periodontitis

ETIOLOGY: retained plaque, poor crown & bridge in the past

CASE TYPE: II PROGNOSIS: excellent

RECOMMENDED PERIODONTAL TREATMENT:

oral hygiene instructions, occlusal adjustment, cavitron
Oral hygiene instructions, prophy
re-evaluate on a recall basis

POSITIVE MEDICAL FINDINGS AND COMPLICATING FACTORS: none

PATIENTS ATTITUDE AND CLASSIFICATION: + - I

TO BE DONE BY REFERRING DENTIST BEFORE PERIODONTAL TX.: none

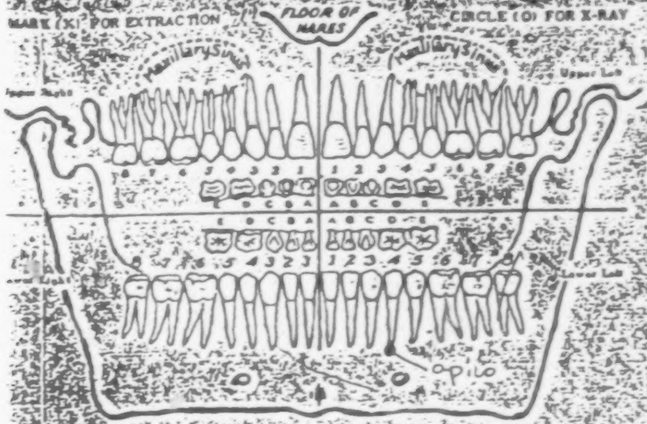
RECOMMENDED RESTORATIVE TREATMENT: (IF ANY)

COMMENTS: Thanks, Bennett, I appreciate your referring Judge Nixon.
laf

Name N[illegible], Walter L. Date 5-14-82 Referring Doctor 58 [illegible] M

I-76854

MARK (X) FOR EXTRACTION CIRCLE (O) FOR X-RAY


FLOOR OF NARES
Maxillary Sinus
Maxillary Sinus
Upper Right
Upper Left
Lower Right
Lower Left
apico

+ periodontal pockets 765⌉

WORKUP impacted ⌈8

CC sensitivity ⌈4 - previous RCT

EXAM TMJ syndrome - Advised ⌈8 may be contributing to pain

IMP

REC
1) construction of bruxism splint
2) STR ⌈8
3) to see Dr. Faler
4) possible apico ⌈4

ALLERGIES

POSITIVE FINDINGS

ESTIMATE

FINANCIAL ARRANGEMENTS

| Date | Services Rendered | Fees |
|---|---|---|
| 5-14-82 | SxR, Photos construction of bruxism splint | |
| Y/KA | consult on office surg & STR ⌈8 possible | |
| | apico ⌈4 | 202 00 |
| 6-15-82 | EKG STR ⌈8 under IV sed (ml) ① XCF 10mg | |
| Y/KA | BP 130/88, 140/82 Diaz 4mg Dec 50mg [illegible] Rx | |
| | given | 187 00 |
| 6/24/82 | OV c/o pain ⌈8 area irrigated & Gez placed | |
| LS | Referred to Dr Faler | N/C |
| | | |
| | | |
| | | |
| | | |

COMMITTEE EXHIBIT NO. 15

The State of Mississippi, | By Virtue of A License
Hinds County

from the Clerk of the Circuit Court of said County of Hinds I have this day celebrated the Rites of Matrimony between

Mr. [illegible] and

M [illegible]

Given under my hand, this the 15 day of [illegible] A. D. 19[illegible]

[illegible] (Seal.)

124-344

[illegible]

Date of Application [illegible] 82
Issue [illegible] 82

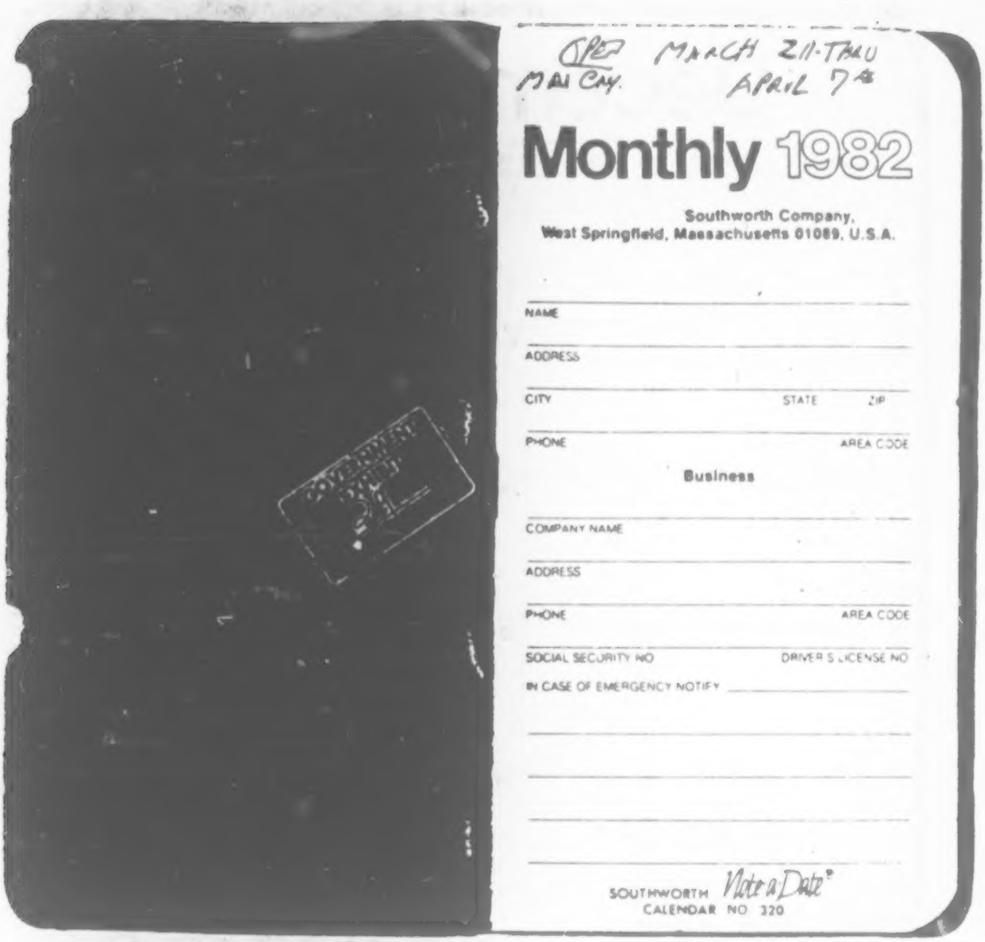
Recorded: Book [illegible] Page [illegible]

County

Mississippi State Board of Health [illegible] Form No. 163

ATTEST A TRUE COPY
This 31 day of [illegible] 19[illegible]
BARBARA DUNN, Circuit Clerk
By [illegible] D. C.

COMMITTEE EXHIBIT NO. 16



OPEN MARCH 21-THRU
MAI CAY. APRIL 7th

# Monthly 1982

Southworth Company,
West Springfield, Massachusetts 01089, U.S.A.

NAME

ADDRESS

CITY STATE ZIP

PHONE AREA CODE

**Business**

COMPANY NAME

ADDRESS

PHONE AREA CODE

SOCIAL SECURITY NO DRIVER'S LICENSE NO

IN CASE OF EMERGENCY NOTIFY

SOUTHWORTH Note a Date®
CALENDAR NO. 320

GOVERNMENT EXHIBIT

# December 1981

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
|  |  | 1 | 2 | 3 | 4 | 5 |
| 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| 13 | 14 | 15 | 16 | 17 MOTIONS TODAY AT 9 AM. | 18 | 19 MISS. DEER SEASON [illegible] THRU [illegible] THRU JAN. 16th<br>2nd LA DUCK [illegible] JAN. 20 |
| 20 | 21<br>Hanukkah | 22 | 23 | 24 | 25<br>Christmas | 26 3rd DUCK SEASON — THRU JAN 11th<br>Boxing Day (U.K., not Scotland) |
| 27 | 28 LAURIE GUTIERREZ PARTY TO TONITE<br>9:30 - [illegible] | 29 | 30 | 31 |  |  |

# January 1982

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | | | | | 1<br>New Year's Day | 2 |
| 3 | 4 | 5 | 6 | 7 | 8 MOTIONS & SPECIAL APPLICATIONS AT 9 | 9 |
| 10 | 11 | 12 | 13 | 14 | 15 | 16 LAST DAY MISS DEER SEASON – GUNS & DOGS |
| 17 MISS. PRIMITIVE WEAPON SEASON THRU JAN 31ST | LAST DAY OF ALA-DEER SEASON | 19 | 20 LAST DAY LA-DUCK SEASON | 21 | 22 MOTIONS TODAY | 23 |
| 24<br>31 | 25 | 26 DOCK TRIALS AT 8:30 AM JACKSON SUPV/CASES | 27 | 28 | 29 | 30 |

Vance

1

# MARRIAGE LICENSE RECORD

ATE OF MISSISSIPPI
nty of Hinds, 1st District

APPLICATION FOR MARRIAGE LICENSE IN MISSISSIPPI

MALE APPLICANT

ne Gary Errol Turner

white Age 29 Date of Birth 9-29-52 Evidenced by dl Where Born La

idence 1000 Lakeshore Dr No 59 State Ms County Hinds City Jackson

mber of ious Marriages 1 Last Marriage ended by divorce Date ended 4-unk-72

cation ghest level completed) Elementary or High School College 4

her's l Name Gamliel Earl Turner Address 710 Wiggins Cir Pascagoula Ms

her's Name Lucille Christine Edwards same

al Test by Date /6/52

FEMALE APPLICANT

ent Name Erin Gayle Wallace Maiden Wallace

white Age 23 Date of Birth 3-10-59 Evidenced by dl Where Born W.V.

ence 1000 Lakeshore Dr State Ms County Hinds City Jackson

ber of ious Marriages 0 Last Marriage ended by Date ended

ation hest level completed) Elementary or High School College 2

er's Name Alton Hamric Wallace Address 364 Rt 1 Mansfield La

her's Name Patsy Gayle Lockett same

l Test by Date /6/82

ATE OF MISSISSIPPI
nty of Hinds, 1st District

Personally appeared before me the undersigned authority in and for said County and State, the above named male and female applicant, who state on their that the matters and things stated therein are true and correct, and that at no time within one year prior hereto has either applicant been prohibited from ying by court order.

Male Applicant Sworn to and subscribed before me, this the 4th day of

Female Applicant A. D. 19 82 at 2:15 PM M

ATE OF MISSISSIPPI,
nty of Hinds, 1st District
the Circuit Clerk of Hinds County, Mississippi:

## AFFIDAVIT OF PARENTS, GUARDIAN OR OTHER PERSONS AS TO AGE OF APPLICANTS FOR MARRIAGE LICENSE IN MISSISSIPPI

We, the undersigned, being first duly sworn, make oath (or affirm) that__________

__________ is______ years of age, and that__________ Address__________

years of age, and that said parties are making application for issuance of Marriage License to which application this affidavit is attached.

We, hereby give our consent to the marriage of the above named applicants and the Circuit Clerk is hereby directed to issue license as requested.

Signed__________ __________Relation to male applicant

Signed__________ __________Relation to female applicant

Sworn to and subscribed before me, this the______day of__________, A. D., 19____

By__________ D. C. Official Title__________

---

ATE OF MISSISSIPPI,
nty of Hinds, 1st District

## NOTICE TO PARENTS, GUARDIAN OR NEXT OF KIN OF APPLICATION FOR MARRIAGE LICENSE

__________ Address__________

__________ Address__________

sent by certified mail__________ Date Return Receipt Received__________

By__________ D. C. Wm. E. "Bill" McKINLEY, Circuit Clerk

---

ATE OF MISSISSIPPI,
nty of Hinds, 1st District

## MARRIAGE LICENSE AND CERTIFICATE

This is to certify that a valid Marriage License was issued to the above named applicants on this date May 12, 19 82

By [illegible] D. C. Wm. E. "Bill" McKINLEY, Circuit Clerk

---

ATE OF MISSISSIPPI,
nty of Hinds, 1st District

This is to certify that I have received and [illegible] returned certificate of marriage showing that by virtue of the above license a marriage ceremony was [illegible] the [illegible] day of [illegible] at City Ridgeland County Madison

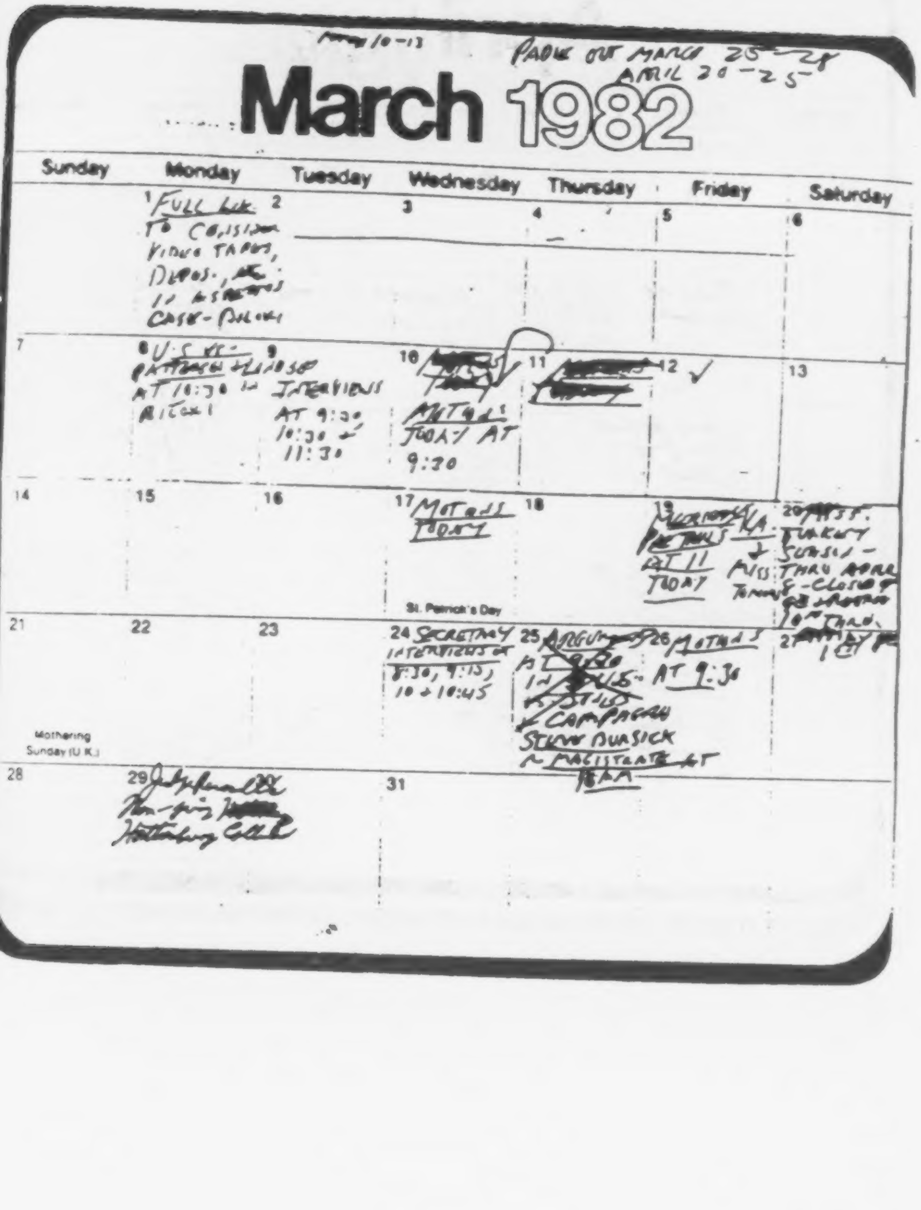
[illegible] Title [illegible]

5-19-82 Filed by [illegible] D. C. Wm. E. "Bill" McKINLEY, Circuit Clerk

of the Judge of the__________ Court

# February 1982

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
|  | 1 | 2 APPT. IN N.O. at 11:30 | 3 MOTIONS TODAY AT 9:30 | 4 | 5 PRELIMINARY INJUNCTION AT 9:30 ([illegible]) | 6 CONFERENCE AT 2 TODAY IN N.O. |
| 7 | 8 ~~JACKSON JURY CHALLENGE~~ AT 1:30 - 2 WKS | 9 LUNCH(?) G.W. | 10 | 11 PRELIM. PRE-TRIAL ON [illegible] ATTORNEYS OF ARRESTEES CASE AT 1:30 IN JACKSON | 12 FIFTH CIRCUIT MEETING IN N.O. — TIME ?? | 13 |
| 14<br>Valentine's Day | 15 2nd WEEK OF JACKSON JURY CHALLENGE<br>Washington's Birthday | 16 | 17 | 18 | 19 ~~MEMORIAL~~ [redacted] S TODAY! [redacted] 10 AM | 20 |
| 21 | 22 MARK OUT THIS WEEK - [illegible]<br>JAS SUMMERS AT 10AM | 23 | 24 TWO CHANGES OF PLEAS + 3 SENTENCINGS AT 10 AM IN JACKSON<br>Ash Wednesday | 25 3 CHANGES OF PLEAS AT 9:30 IN JACKSON | 26 ~~CONFERENCE~~ RE MISS. CHEMICAL VS. SHELL OIL AT 10AM IN JACKSON ~~[illegible]~~<br>MOTIONS AT 9:30 | 27 |
| 28 |  |  |  |  |  |  |



[illegible] 10-13

PADRE OUT MARCH 25-28
APRIL 20-25

# March 1982

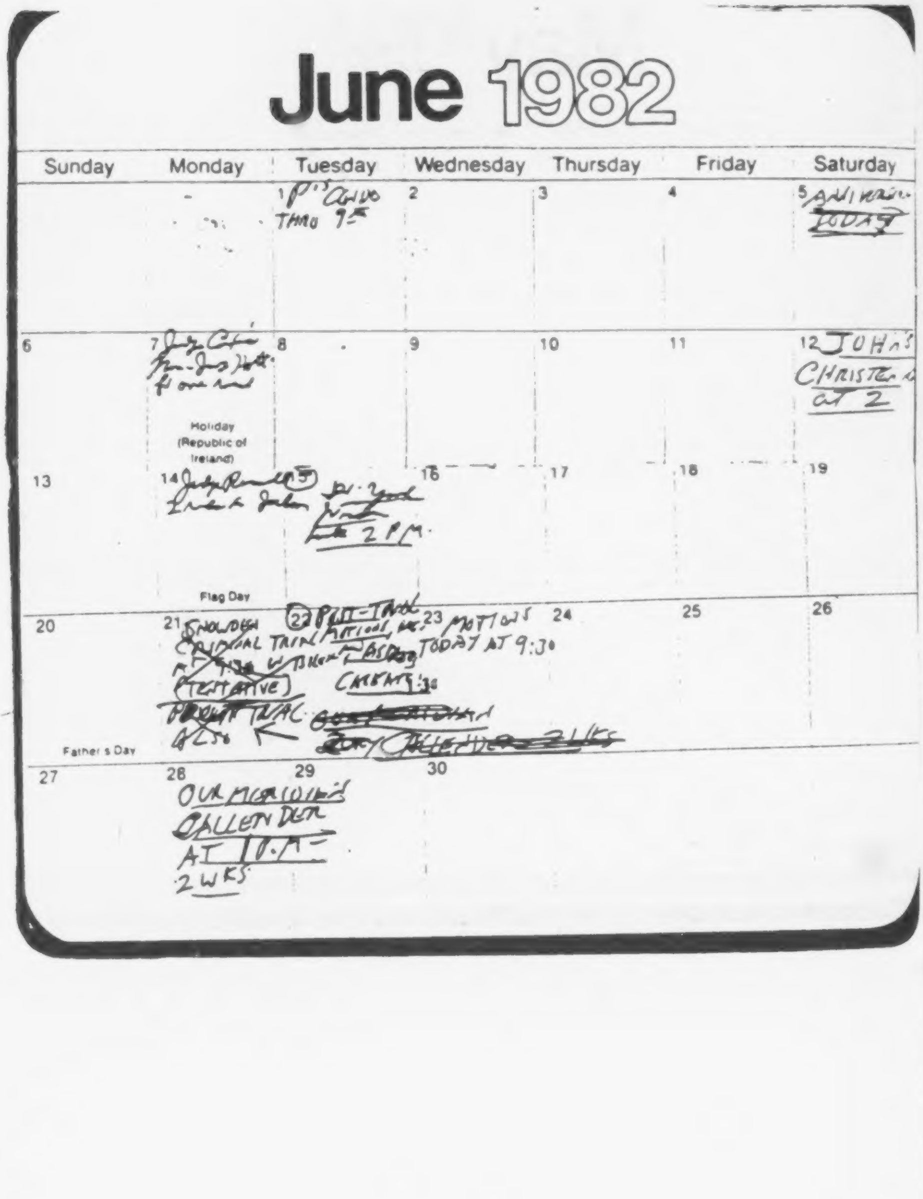
| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
|  | 1 FULL LOOK TO CONSIDER VIDEO TAPES, DEPOS., ETC. IN ASBESTOS CASE - BILOXI | 2 | 3 | 4 | 5 | 6 |
| 7 | 8 U.S. v. PATTERSON & LINDSEY AT 10:30 in BILOXI | 9 INTERVIEWS AT 9:30 10:30 & 11:30 | 10 [illegible] MOTIONS TODAY AT 9:30 | 11 [illegible] | 12 ✓ | 13 |
| 14 | 15 | 16 | 17 MOTIONS TODAY<br>St. Patrick's Day | 18 | 19 [illegible] PETITIONS AT 11 TODAY [illegible] & MISS TOMMY | 20 MISS. TURKEY SEASON - THRU APRIL 5 - CLOSED [illegible] 10th THRU. |
| 21<br>Mothering Sunday (U.K.) | 22 | 23 | 24 SECRETARY INTERVIEWS AT 8:30, 9:15, 10 & 10:45 | 25 ~~ARGUMENT AT 9:30 IN [illegible]~~ STILLS CAMPAIGN STEVE BURSICK & MAGISTRATE AT 10AM | 26 MOTIONS AT 9:30 | 27 [illegible] 1 CT |
| 28 | 29 [illegible] | 30 | 31 |  |  |  |

# April 1982

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | | | | 1 | 2 FINAL PRE-TRIAL CONF. IN ASBESTOS CASE AT 9:30 IN BILOXI | 3 |
| 4<br>Palm Sunday | 5 [illegible] off this week | 6 HAIR APPT AT 9:30 HOME | 7 ASBESTOS CASE DISCUSSION AT 9:30 | 8<br>Passover | 9 MISS TURZEND SESSION CLOSED FOR TODAY<br>Good Friday | |
| 11<br>Easter | 12 Judge ~~[illegible]~~ Biloxi Judge Collins<br>Easter Monday (Canada) | 13 | 14 | 15 | 16 BILOXI JURY CASE PRETRIAL AT 9 AM<br>[illegible] CASE | 17 |
| 18 | 19 MOTIONS TODAY AT 9:30<br>Judge [illegible] 2 [illegible] Collins at [illegible] | 20 | 21 | 22 | 23 DR. GARCIA (BARBARA) AT 11:30 | 24 ALA. TURKEY SEASON TOMORROW |
| 25 | 26 Judge [illegible] Thomas for 1 day | 27 PRUITT MOTIONS AT 9 IN BILOXI | 28 | 29 TRIP(?) | 30 | |

# May 1982

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | | | | | | 1 LAST DAY OF MISS- TURKEY [illegible] |
| 2 5th CIR. CONF TO WED. IN SAN ANTONIO | 3<br>May Day Holiday (U.K.) | 4 | 5 | 6 | 7 ~~[illegible] LAURA'S CLOSING [illegible]~~ MERIDIAN | 8 |
| 9<br>Mother's Day | 10 STATUS RULING MAC VS SHELL IN BILOXI AT 2 P.M. ~~ALSO MOTIONS~~ AT 9:30—ALL DAY | 11 [illegible] | 12 JURY SELECTION IN ASBESTOS CASE AT 9:30 | 13 | 14 | 15<br>Armed Forces Day |
| 16 | 17 TRIAL OF ASBESTOS CASE AT 9:30 | 18 | 19 | 20 | 21 PETIT ORAL ARGUMENT AT NOON | 22 |
| 23 | 24 CONVOCATION TONITE<br>Victoria Day (Canada) | 25 DINNER TONITE | 26 | 27 | 28 | 29 |
| 30 SURPRISE PARTY- LAURA 6-8 - 905 [illegible] - BC. | 31 Memorial Day<br>Spring Holiday (U.K., not Scotland) | | | | | |



# June 1982

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | | 1 P's [illegible] THRU 9th | 2 | 3 | 4 | 5 ANNIVERS<br>TODAY |
| 6 | 7 Judge [illegible]<br>[illegible]<br>[illegible] one [illegible]<br>Holiday (Republic of Ireland) | 8 | 9 | 10 | 11 | 12 JOHN'S<br>CHRISTEN<br>AT 2 |
| 13 | 14 Judge [illegible] ⑤<br>[illegible] Julian<br>Flag Day | [illegible]<br>[illegible]<br>[illegible] 2 P.M. | 16 | 17 | 18 | 19 |
| 20<br>Father's Day | 21 SNOWDEN<br>CRIMINAL TRIAL<br>~~AT 9:30~~ W/ [illegible]<br>(TENTATIVE)<br>~~[illegible]~~ TRIAL<br>~~@ 2:30~~ ← | ㉒ PRE-TRIAL<br>MOTIONS, etc.<br>[illegible]<br>CAREY 1:30<br>~~[illegible]~~<br>~~[illegible] CALLENDER 2 WKS~~ | 23 MOTIONS<br>TODAY AT 9:30 | 24 | 25 | 26 |
| 27 | 28 OUR [illegible]<br>CALLENDER<br>AT 10 A.M.<br>2 WKS | 29 | 30 | | | |

# July 1982

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | | | | ①<br>Dominion Day (Canada) | 2 | 3 |
| 4<br>Independence Day | 5<br>THREE CRIMINAL PLEAS AT 1:30 IN MERIDIAN | 6<br>PRELIMINARY INJUNCTION AT 9:30<br>TWO CRIM. PLEAS AT 1:30 | 7 | 8 | 9 | ⑩ |
| 11 | 12<br>HIGHWAY PATROL MOTION TOMORROW AT 10<br>Holiday (N Ireland) | 13<br>~~AG~~ LUNCH AT 12<br>APPT. AT 2 IN HATTIESBURG | 14<br>T[redacted]<br>SPECIAL NATURALIZATION AT 10 AM.<br>JACKSON THIS AFTERNOON | 15<br>JACKSON NON-JURY PRE-TRIALS AT 9:30 | 16<br>HATTIESBURG PRE-TRIALS AT 9:30 | 17 |
| 18 | 19 | 20<br>NEYREY MATTER 10 | 21<br>MATHIS ~~TODAY AT~~ 9:30 | 22 | 23 | 24<br>VACATION BEGINS TODAY ~~THRU~~ to SUNDAY AUG. 8th - |
| 25 | 26 | 27 | 28 | 29 | 30 | 31 |

OUT

# August 1982

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| 1 | 2<br>Holiday (Republic of Ireland) | 3 | 4<br>OUT | 5 | 6 | 7 |
| 8<br>VACATION ENDS TODAY | 9 | 10 | 11<br>MOTIONS TODAY AT 9:30 | 12<br>~~MOTIONS IN ASBESTOS CASES AT 9:30- STAY SUMMARY JUDGMENT RULE 12~~ | 13 | 14 |
| 15 | 16<br>JACKSON NON-JURY CALENDAR AT 10 A.M | 17 | 18<br>WILMA WASHINGTON AT 5 | 19<br>APPT. AT 5! | 20<br>~~POSSIBLE ASBESTOS MOTN~~ THIS AFTERNOON ASBESTOS MOTION AT<br>PAUL FRAZIER- 3-7 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27<br>BARNARDS APPT. AT 11 | 28 |
| 29 | 30<br>Late Summer Holiday (U.K., not Scotland) | 31<br>VICKSBURG PRETRIALS AT 10 | | | | |

# September 1982

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | | | 1 GRADY JURY<br>SWEARING AT<br>2:00 P.M. W THINGS<br>TO FOLLOW | 2 HEARING [illegible]<br>AT [illegible]<br>AT [illegible]<br>1:30 —<br>[illegible] CASE | 3 TO LARRY'S | 4 1st DOVE<br>SEASON W<br>[illegible] MISS.<br>THRU OCT.<br>3rd |
| 5 | 6 HOLIDAY<br>Labor Day | 7 Judge [illegible]<br>[illegible] (8 [illegible]) [illegible]<br>[illegible] | 8 MOTIONS<br>TODAY<br>AT 9:30 | 9 | 10 MOTIONS<br>TODAY AT<br>9:30 | 11 |
| 12 | 13 BILOXI 1 - 14<br>JURY CALLED<br>AT 9:30 - I WAS<br>SCHEDULED CRIMINAL<br>CASE FIRST | 14 | 15 ~~[illegible]~~<br>~~TODAY THRU~~<br>~~17th~~ | 16 ~~[illegible]~~<br>~~WIGGINS [illegible]~~ | 17 | 18<br>Rosh Hashanah |
| 19 | 20 | 21 | 22 WILLIAM<br>WASHINGTON<br>TODAY - 24th<br>BARBARA<br>AT 3 | 23 HARD AT<br>10 AM | 24 | 25 |
| 26 | 27<br>Yom Kippur | 28 | 29 | 30 | | |

# October 1982

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | NOW IS THE TIME TO ORDER A 1983 Note-a-Date® CALENDAR FROM YOUR DEALER | | | | 1 | 2 BANQUET AT 7PM<br>HONORING JUDGE GRANT —<br>ROYAL D'OR VERSAILLES ROOM |
| 3 | 4 MEETING MISS. CHEMICAL VS. CHEMICO AT 4. | 5 ~~ARGUMENTS MOTIONS AT 9:30~~<br>LUNCHEON APPT AT 12 | 6 MEETING AT 6 AT HOUSE — LEN, STEVE | 7 MOTIONS TODAY AT 9:30 | 8 | 9 |
| 10 | 11 DISTRICT JUDGES' WORKSHOP IN GALVESTON TO 13th<br>Columbus Day<br>Thanksgiving Day (Canada) | 12 | 13 | 14 | 15 | 16 2nd DEER SEASON IN MISS. THRU NOV. 7th |
| 17 | 18 HATTIESBURG CALENDAR AT 10 — 2 WKS | 19 | 20 | 21 | 22 | 23 |
| 24<br>31<br>Halloween | 25 ~~MISS. CHEMICAL VS. SHELL OIL — TENTATIVE~~ | 26 | 27 | 28 CRIMINAL PLEAS TODAY | 29 PRELIMINARY INJUNCTION AT -1½<br>+<br>CRIMINAL PLEAS | 30 |

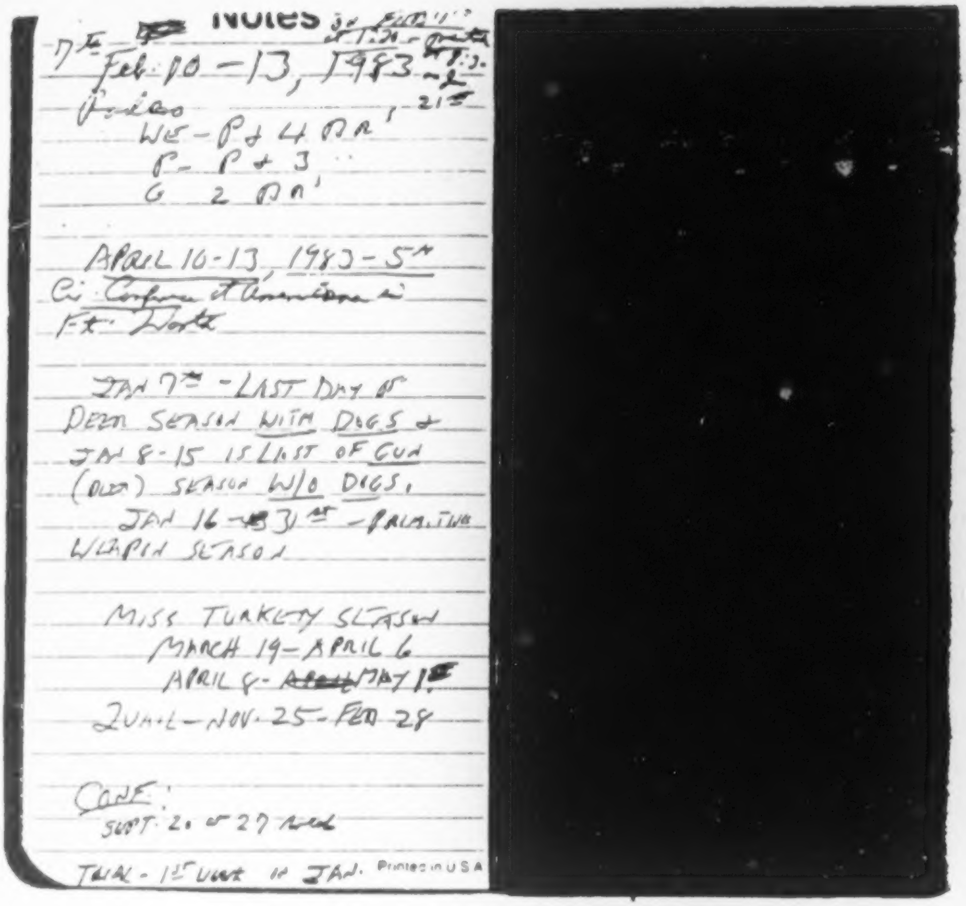
# November 1982

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | 1 MEETING AT 2 P.M. WITH MS. [illegible] OF O.S. PAPER | 2<br>Election Day | 3 McGINNS TODAY AT 9:30 | 4 TO JACKSON TODAY — MOOT COURT THIS EVENING AT ~~5:30~~ 6 | 5 RECEPTION 5:30 – 7:30 | 6 FOOTBALL GAME AT TULANE VS. OLE MISS |
| 7 | 8 VICKSBURG CALENDAR AT 1:30-2 CASES | 9 | 10 | 11 [illegible]<br>Veterans Day<br>Remembrance Day (Canada) | 12 PLEA CHARGES AT 10 A.M. IN VICKSBURG | 13 MISS. DEER SEASON W/O DOGS THRU 19th |
| 14 | 15 | 16 | 17 | 18 LAW CLERK INTERVIEWS 10-12 IN JACKSON | 19 | 20 DEER SEASON (DOGS) THR DEC. 15<br>[illegible] |
| 21 | 22 | 23 | 24 | 25 QUAIL SEASON THRU FEB 28<br>Thanksgiving Day | 26 | 27 |
| 28 | 29 TRO AT 10<br>RALPH OFF THRU WED | 30 TO DEWITT YOAKS THIS AFTERNOON IF POSSIBLE | | | | |

# December 1982

1½ [illegible] 100 yds.

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | | TO PRUETT YORK'S THIS AFTERNOON IF POSSIBLE | 1 LAST DAY OF 1st DEER SEASON<br>QUAIL HUNT WITH PRUETT YORK TODAY + TOMORROW | 2 | 3 | 4 BOY SCOUT BANQUET |
| 5 | 6 MOTIONS AT 9:30 | 7 | 8 MOTIONS TODAY AT 9:30 | 9 | ⑩ PLEASANTON DUCK TRY - 1:30 P.M. (ROY HINDS) CHARLOTTE, TEX. 78011 | SEASON [illegible] |
| 12 | 13 OUT | 14 OUT | 15 DUCK SEASON (few) THRU JAN 31st | 16 | ⑰ SAM + [illegible] AT 6:30 | 18 2nd DEER SEASON (DOGS) THRU JAN. 7th |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 3rd DEER SEASON THRU JAN. 18th |
| 26 | 27<br>Boxing Day<br>(U.K. not Scotland) | 28 | 29 | 30 | 31 | |



Notes [illegible]

7th Feb 10 – 13, 1983 [illegible]

[illegible] 21st

WE – P & 4 PM

P – P & 3

G 2 PM

APRIL 10-13, 1983 – 5th

Ci Conference of Americans in

Ft. Worth

JAN 7th – LAST DAY OF DEER SEASON WITH DOGS &

JAN 8-15 IS LAST OF GUN (DEER) SEASON W/O DOGS,

JAN 16 – 31st – PRIMITIVE WEAPON SEASON

MISS TURKEY SEASON

MARCH 19 – APRIL 6

APRIL 8 – ~~APRIL~~ MAY 1st

QUAIL – NOV. 25 – FEB 28

CONF:

SEPT. 20 or 27 week

TRIAL – 1st WEEK IN JAN. Printed in U.S.A

COMMITTEE EXHIBIT NO. 17

STATE OF MISSISSIPPI
OFFICE OF THE GOVERNOR
POST OFFICE BOX 139
JACKSON, MISSISSIPPI 39205

WILLIAM F. WINTER
GOVERNOR

December 8, 1982

Honorable Bob Graham
Governor of Florida
State Capitol
Tallahassee, Florida 32301

RE: Extradition - ROBERT L. WATKINS

Dear Governor Graham:

At the direction of Governor Winter, I am enclosing extradition requisition, agent's commission and supporting documents in the above styled matter.

If you should honor Governor Winter's request, we shall appreciate your forwarding your warrant of rendition, together with our agent's commission, to the authorities of Palm Beach County, Florida, with the request that they notify by collect wire:

Honorable Paul Holmes
District Attorney
Forrest County Courthouse
Post Office Box 207
Hattiesburg, Mississippi 39401

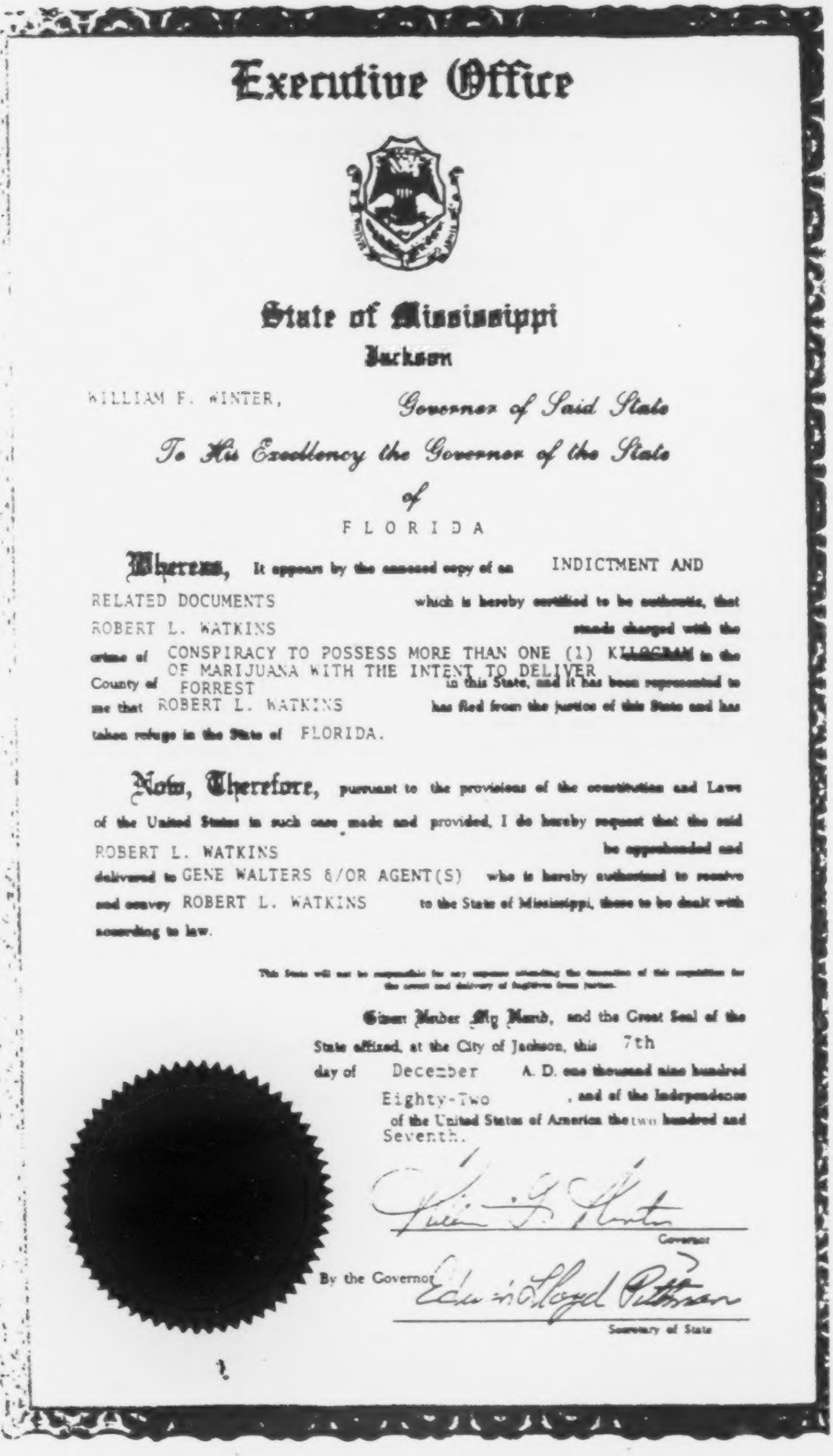
when this subject will be available for release to our agent.

Sincerely,

Sue Evans

Sue Evans
Extradition Secretary

cc: Honorable Paul Holmes
Honorable Steve Wright
Assistant Attorney General



# Executive Office

## State of Mississippi

### Jackson

WILLIAM F. WINTER, *Governor of Said State*

*To His Excellency the Governor of the State of*

FLORIDA

**Whereas,** It appears by the annexed copy of an INDICTMENT AND RELATED DOCUMENTS which is hereby certified to be authentic, that ROBERT L. WATKINS stands charged with the crime of CONSPIRACY TO POSSESS MORE THAN ONE (1) KILOGRAM OF MARIJUANA WITH THE INTENT TO DELIVER in the County of FORREST in this State, and it has been represented to me that ROBERT L. WATKINS has fled from the justice of this State and has taken refuge in the State of FLORIDA.

**Now, Therefore,** pursuant to the provisions of the constitution and Laws of the United States in such case made and provided, I do hereby request that the said ROBERT L. WATKINS be apprehended and delivered to GENE WALTERS &/OR AGENT(S) who is hereby authorized to receive and convey ROBERT L. WATKINS to the State of Mississippi, there to be dealt with according to law.

This State will not be responsible for any expense attending the execution of this requisition for the arrest and delivery of fugitives from justice.

**Given Under My Hand,** and the Great Seal of the State affixed, at the City of Jackson, this 7th day of December A. D. one thousand nine hundred Eighty-Two, and of the Independence of the United States of America the two hundred and Seventh.

William F. Winter

Governor

By the Governor Edwin Lloyd Pittman

Secretary of State

# Executive Office

## State of Mississippi

### Jackson

WILLIAM F. WINTER, *Governor of the State of Mississippi*

*To All to Whom these Presents Shall Come--Greeting:*

**Know Ye,** That I have authorized and empowered, and by these presents do authorize and empower SHERIFF GENE WALTERS &/OR AGENT(S) to take and receive from the proper authorities of the State of FLORIDA, ROBERT L. WATKINS a fugitive from justice, and convey Robert L. Watkins to the said State of Mississippi, there to be dealt with according to law.

(This State will not hold itself responsible for the expenses attending the execution of this requisition)

**In Witness Whereof,** I have hereunto signed my name and caused the Great Seal of the State of Mississippi to be affixed, at the City of Jackson, this 7th day of December, in the year of our Lord One Thousand Nine Hundred Eighty-Two.

William F. Winter
Governor

By the Governor:

Edwin Lloyd Pittman
Secretary of State

(COMPLETE RETURN ON REVERSE SIDE)

COMMITTEE EXHIBIT NO. 18

FILED
DEC 27 1982
Marian Brown
CIRCUIT CLERK

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS

CAUSE NUMBER 10,041

DREW FAIRCHILD

DEFENDANT

## O R D E R

ON THIS DAY this Cause came on to be heard upon the Motion of the State of Mississippi, ore tenus, to pass the above styled and numbered Matter to the files as pertains to the Defendant, Drew Fairchild, for the reasons that said Defendant has been awaiting sentencing for a number of months, that said Co-defendant in the above styled and numbered Matter has been a fugitive from justice, and was apprehended in the State of Texas and also in the State of Florida; nevertheless, the State of Mississippi, despite its diligent efforts to obtain the body of Co-defendant, it has been unable to return him to the State of Mississippi to await trial. State would further show that the Co-defendant was a pilot which was actually flying the aircraft involved with controlled substances, and would further show the Court that Drew Fairchild has agreed to cooperate with the State of Mississippi, in its efforts to prosecute the pilot and testify if necessary, and further the State of Mississippi, has been made aware that he has cooperated with the Mississippi Bureau of Narcotics and supposedly the Federal government concerning this investigation and was not indicted by the Federal government for his role although all other parties besides Drew Fairchild or the pilot were indicted by the Federal government and the State of

Mississippi, would ask that this Matter be passed to the files at this time so that the Defendant's right to a speedy trial, sentence within reasonable time, and/or any due process of law rights will not be violated as to the Defendant, Drew Fairchild, and the Court after considering the same based upon the above and foregoing reasons, finds that said Matter is well taken and should be sustained.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the above styled and numbered Matter be, the same is hereby, passed to the files at this time based upon the foregoing reasons.

SO ORDERED AND ADJUDGED on this the 23rd day of December, A.D., 1982.

Jack B. Weldy
CIRCUIT COURT JUDGE

STATE OF MISSISSIPPI
COUNTY OF FORREST

I, MARIAN BROWN, Circuit Clerk of Forrest County do hereby certify that the foregoing is a true and correct copy of Order - Passing to files as the same appear on record in my office in Book 58 Page 84-85

Given under My hand and offical seal on this 13th day of June, 1985

Marian Brown
Circuit Clerk
By Susie Russell DC

COMMITTEE EXHIBIT NO. 19

7

FILED
JAN 26 1983
Marian Brown
CIRCUIT CLERK

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS

CAUSE NUMBER 10,041

ANDREW FAIRCHILD

DEFENDANT

## MOTION

COMES NOW, the State of Mississippi, by and through the Office of the District Attorney, moved to reinstate the charges and complete file of the Defendant, Andrew Fairchild, in the above styled and numbered Cause and would show in support thereof:

I

That the Defendant, Andrew Fairchild, entered a plea of Guilty to the charge in January, 1982 and has been awaiting sentence since that period of time.

II

Subsequently, the State of Mississippi, passed the Matter to the files for the reason that the Co-defendant in the case was never apprehended and brought back to the jurisdiction of the State of Mississippi, although he had been arrested twice.

III

The State of Mississippi did not desire to sentence the Defendant, Andrew Fairchild, for the reason that he had indicated a willingness to testify and cooperate with the State of Mississippi in the prosecution of Co-defendant.

IV

That in order to avoid any constitutional problems, affording the Defendant his right to a speedy trial, disposition, and/or due process of law according to the Fourteenth Amendment in a Constitutional Standards, the State of Mississippi requested that the Matter be passed to the files in December of 1982.

V

And since that time, the Co-defendant, Robert Watkins, has returned to the State of Mississippi and is under the jurisdiction of the Courts in the State of Mississippi and, therefore, the State feels the interest of Justice would dictate that this Matter be reinstated upon the active docket of the Circuit Court of Forrest County, Mississippi.

RESPECTIVELY submitted on this the 26th day of January, A.D., 1983.

DISTRICT ATTORNEY

FILED
JAN 26 1983
Marian Brown
CIRCUIT CLERK

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS

ANDREW FAIRCHILD

CAUSE NUMBER 10,041

DEFENDANT

## ORDER

ON THIS DAY this Cause came on to be heard upon Motion of the State of Mississippi, to reinstate on the active docket the file against Andrew Fairchild, for the reason that the Co-defendant is now returned to the jurisdiction of the State of Mississippi, and the State of Mississippi is desirous of having a disposition of the Defendant, Andrew Fairchild, and the Court considering the fact that the Matter was passed to the files in December, 1982 after the Defendant had previously entered a plea in January of 1982 to avoid any constitutional due process of law problems with the Defendant not being sentenced within that period of time, due to the fact that State of Mississippi indicated that he would testify in trial against this Co-defendant. The Court finds that the Matter should be reinstated on the active docket and, therefore, orders that the case against Drew Fairchild in the entire file be placed upon the active docket in the Circuit Court of Forrest County, Mississippi, for disposition in the present 1983 term, or a subsequent term of Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Clerk of the Circuit Court of Forrest County, Mississippi, is hereby directed to place upon the active docket the previous Matter which is passed to the files pertaining to Andrew Fairchild in the [illegible]

DEPT:
LAST LINE OF
TYPE MISSING ?

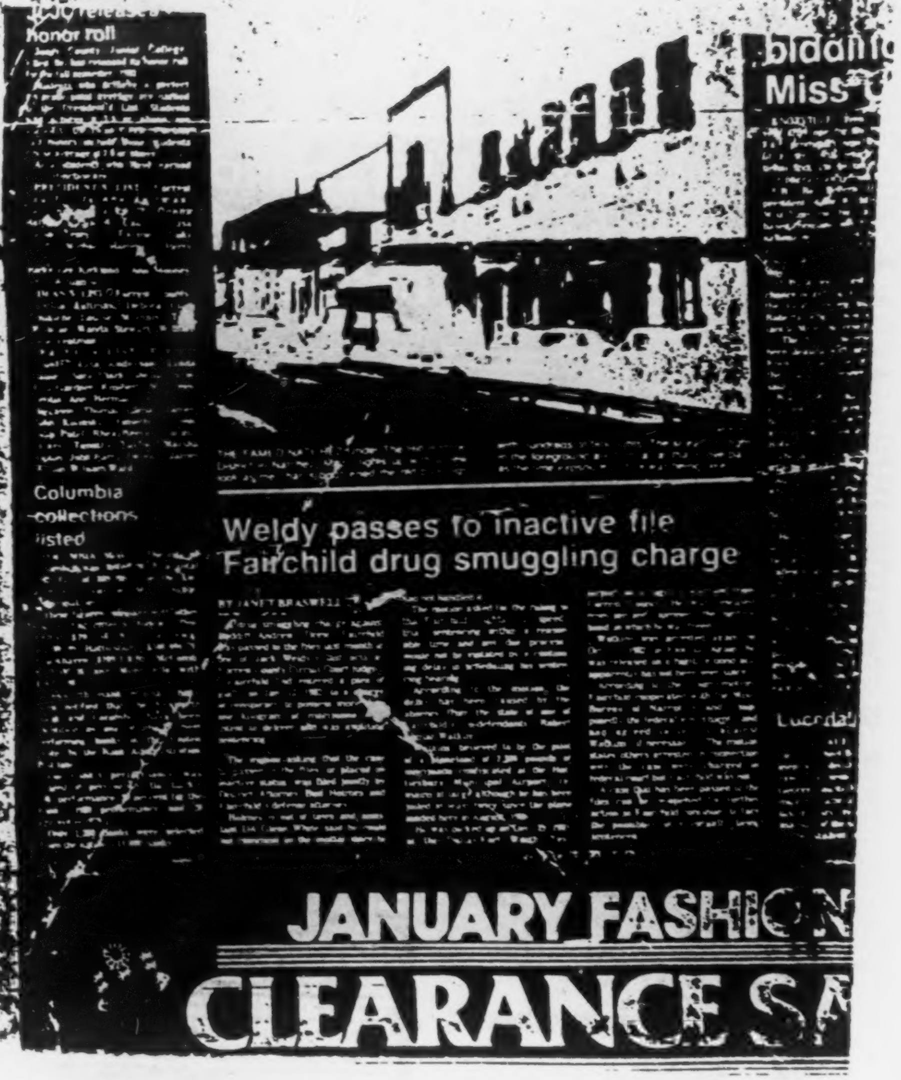
SO ORDERED AND ADJUDGED on this the 26th day of January, A.D., 1983.

CIRCUIT COURT JUDGE

COMMITTEE EXHIBIT NO. 20

DEFENDANT'S EXHIBIT 6

JANUARY 7, 1983
HATTIESBURG AMERICAN



## JJC releases honor roll

Jones County Junior College [illegible] honor roll [illegible]

PRESIDENT'S LIST [illegible]

DEAN'S LIST [illegible]

## Columbia collections listed

[illegible]

THE FAMILY [illegible]

# Weldy passes to inactive file Fairchild drug smuggling charge

BY JANET BRASWELL

[illegible]

## bidan Miss

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JANUARY FASHION

CLEARANCE SA

8

burg AMERICAN

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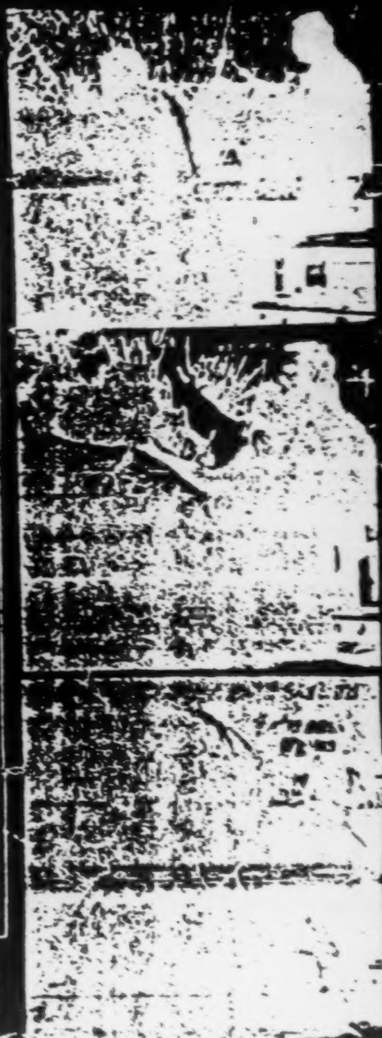

# Fairchild case returns to active files

[illegible]

PLEASE turn to Page 6

# Judge says no to legislators

[illegible]

27 JAN

mission in Geneva to start bargaining after a two-month recess. He declined to comment to reporters.

## Earthquake strikes Tokyo

## Storm slams Pacific Coast

## Police report

THIS TWO-PICTURE sequence shows, at left,

beer at the Eire Pub in the Dorchester section of Boston and then enjoying that beer. Reagan

made an unscheduled

technology facilities in the

Wednesday

## TAX COMMENTS

FROM Page

## Judges say administratio
## wants to strip independe

WASHINGTON (AP) —

## FAIRCHILD CASE

FROM Page

## Is It Mayor or Governor Ch

COMMITTEE EXHIBIT NO. 21

DEFENDANT'S EXHIBIT ~~44A~~ 16A

(Note: This transcript will consist only of the pertinent parts of the tape recorded conversation).

R. L. JARVIS: My name is ROBERT L. JARVIS, JR. The following is a conversation I'll be having with WILEY FAIRCHILD on April the 18th, 1984, at the office of W. R. FAIRCHILD CONSTRUCTION COMPANY, LIMITED, which, of which WILEY FAIRCHILD is a general partner. That office is located on Highway 49 North in Hattiesburg, Mississippi.

The time is approximately 2:48 PM.

It's approximately 3:25. I've just arrived at FAIRCHILD's office, fixing to go in his private door.

Hey, MIKE.

MIKE: Hello.

FAIRCHILD: Come in. Come in.

LYNN: Hey (unintelligible).

JARVIS: Hey, LYNN.

FAIRCHILD: Okay, we'll ah (unintelligible). That's all right. (Unintelligible)

JARVIS: I don't know if MARGARET told you that I'd been contacted by some FBI Agents that want to talk to me about something-

FAIRCHILD: Yeah.

JARVIS: What's going on?

FAIRCHILD: It's that Judge NIXON stuff. Ain't nothing to it. Goddamn, it's all on a tape. We've got the notes in there. He bought it-

JARVIS: Okay-

FAIRCHILD: Everything is legal.

JARVIS: Okay. Well, you think everything's, everything is-

FAIRCHILD: Yeah-

JARVIS: In its proper place-

FAIRCHILD: Yeah, yeah, and it had nothing to do- They think because ah- They think because- What happened, CARROLL INGRAM and BILL PORTER and BUD HOLMES led me and DREW down Memory Lane or some goddamn blind alley and got him to plead guilty up there. You know about that.

JARVIS: Uh-huh.

FAIRCHILD: And ah then I don't know what happened. I know I didn't do anything. I didn't ask you to do any damn thing. I didn't talk to nobody about doing any damn thing. The next damn thing we knew he was indicted down here for the same thing, see. And this thing up there was ah, was for ah, was for ah fifteen thousand dollars, and ah, and five years suspended see. And ah this deal that I actually made, and ah-

JARVIS: Well what got them fired up all of a sudden about this after all this time?

FAIRCHILD: Ah, I made a damn remark about- They still trying to, were trying to- Well the day before BUD went out, just like you're going out of office tomorrow night-

JARVIS: Uh-huh-

FAIRCHILD: He called DREW and said I'm gonna (unintelligible), and I wanna carry the agreement we had outside. I talked with BILL PORTER the day he got drowned about it. No, he said BILL PORTER told me he wanted to get this thing, wanted us to live up to that agreement and get it over with, and so, and ah DREW said what was the agreement. That was just about this time of day. He said well five thousand dollars, my fine, or five thousand, five thousand dollars fine, five years unsupervised probation. And ah he says well I never heard of that, and he called me, and I called CARROLL. CARROLL says all I know- He's by this morning, asked would I stand in with his attorney, and I said well goddamn. The agreement was it'd go to the file. And, and then ah-

JARVIS: Well, they committed it to the file, didn't they. Who was the one that actually brought it back out?

FAIRCHILD: I don't know what happened. And ah so I said well CARROLL, I'm capable of going to MARVIN RUBIN with this whole goddamn thing. It's just blackmail. And I says I never been blackmailed, and I'm too old to start. And BILL PORTER said that thing going to the file. It's gonna stay there. If it comes out, we'll get it in federal court. So I called WALLACE GUNN, and he said yeah there are some that you can- In a case like this you can get it back in federal court. And ah he said I'm no criminal lawyer, WILEY. You need to get some- Who is a good criminal lawyer here beside ZACK (phonetic), JIMMY DUKES? It's not (unintelligible)-

JARVIS: I don't- See, the problem you run into there is, is JIMMY DUKES and BUD HOLMES have the criminal practice sewed up.

FAIRCHILD: No, there's another good criminal lawyer here.

JARVIS: I'll, I'll see if I can find out for you who, who would be good at that-

FAIRCHILD: Well, anyway, I know it. I know it, and so, so ah I told ah, I told ah, whoever, WALLACE told me who he was. So I told WALLACE the whole thing what I was threatening to do, see, 'cause BOB ROYAL was out there. They didn't indict him. It was blackmail from the word go.

JARVIS: Let me ask you a question, you do that-

FAIRCHILD: Huh?

JARVIS: If, if you went out there, that newspaper thing, aren't you a little bit worried about what HOLMES or CARROLL might end up doing? They may wanna play hardball on this thing.

FAIRCHILD: Well, how?

JARVIS: You've got two attorneys, who, if you bring charges like this against them or accusations, they've got a lot to lose, which means that you might be in the hotseat.

FAIRCHILD: Well, ah-

JARVIS: You know-

FAIRCHILD: Well, I'm just gonna tell 'em that DREW wasn't there and that the records that they got up there tell me and that DREW and BOB was in partners. They couldn't possibly ah, ah, ah, ah BOB ROYAL would have to know about it, see, and that ah, and that BUD HOLMES and, and, and, and ah BILL PORTER were the very best of friends, and ah, and that ah, and that it's my opinion, I believe he was indicted, but why, because, you know, and it's- I, I figure it was blackmail from the word go. And old, old BOB ROYAL sat right there and, and passed the thing on from BILL PORTER, and I said now BOB, I've got your message, but I said not no, but hell no. I said hell, if he have to serve time, he'll just have to serve. And ah so, and I told them FBI men that, and ah, so, but anyway this CARL KEPPER (phonetic), ain't there a CARL KEPPER? No, he's the one that-

JARVIS: CARL KEPPER. There's, there's-

FAIRCHILD: No, he's the one that committed suicide.

JARVIS: There's a, Mrs. KEPPER that's ah-

FAIRCHILD: No, that's another one-

JARVIS: That's a lawyer here-

FAIRCHILD: But anyway, let me tell you. This is all happened one evening, see. So I told WALLACE what I was gonna do, that I'd just been fucked around enough, and I'd been ah, and ah, that I don't know why that GEORGE PHILLIPS didn't carry out the thing, see, and I don't know why it, why it changed, and ah happened. I didn't know nothing about that, but that- But I says I just will die. I just think it's blackmail, and CARROLL INGRAM is deep into it as anybody.

JARVIS: Well, you know that day that the stuff came up on, on Judge NIXON where you had me draw up those assignments in blank.

FAIRCHILD: Yeah.

JARVIS: You remember CARROLL was here that day-

FAIRCHILD: Yeah-

JARVIS: Y'all had just gotten through talking about that. You know one thing, you know we talked about this about two years ago when I said we needed to be a little more careful with this stuff-

FAIRCHILD: Yeah-

JARVIS: Ah, you remember SHERRY was here at that time? SHERRY was one of the witnesses on one of those things, if I, if my memory serves me correctly. Now are they going back to all of the former employees?

FAIRCHILD: I don't know, and I don't give a damn. If I'da done somethin', if it'd been a payoff now-

JARVIS: Well, I'm, you know, I'm, you know, what I'm trying to say is if it looks like a payoff, they're gonna, they're gonna investigate it all the way to-

FAIRCHILD: Well-

JARVIS: To the bottom of it-

FAIRCHILD: Well, they sat right there this morning, and they said, well if there's some record of this- Did he get an assignment, did I, and ah, ah, and they told MARGARET the other night, the subpoena, (unintelligible) says yeah. They went out to her house and asked did we write any check look like would been a payoff to BUD HOLMES or GEORGE PHILLIPS and said- (Interruption for telephone call) says no-

(Non-pertinent conversation)

FAIRCHILD: And an-

JARVIS: Oh-

FAIRCHILD: So WALLACE GUNN said get this lawyer, see.

And I says okay you, you ah call him. And ah so that got on 'bout- So DREW called him and told him what he wanted to do, go down there to get the file and file it the next morning. And ah-

JARVIS: Well, who's been handling DREW's stuff since, since BILL PORTER died?

FAIRCHILD: Nobody. And ~~ah~~ so the next morning I walked in here, and MARK says BUD HOLMES has called for you. I said well if he calls, just tell him I'm not in. He said he wanted to come out and see you. So, and I said well, you'll have to tell him I'm here. Well, hell, about 8:20 he walked in there, and they said BUD HOLMES. I said tell him to come on back.

JARVIS: He came out here?

FAIRCHILD: Yeah, the next morning.

JARVIS: Well, now, that takes guts.

FAIRCHILD: And ah- Well, now, you're jumping to conclusions.

JARVIS: Yeah, I-

FAIRCHILD: You're just jumping, and it's the wrong way, just ninety, or a hundred and ninety degrees from what ah the truth is. And he had Judge McKENZIE with him. And they come in and sat down there, and he said well I want you to get in touch with DREW, and ah have him to lay low, play quiet, and ah when he got too (unintelligible), get excited. I can't remember what it said.

JARVIS: Right.

FAIRCHILD: But I had RODNEY in here. I says now BUD, just what do you recommend- Said just tell him to be quiet. Ain't nobody, just let this thing slide, ain't nobody after DREW's ass. Just be quiet. And I said well that's what I wanna do. Well, I think after this, after that ah- Yep, he told, he said just let it slide, says this media'll get a hold of this thing, and they'll blow it all out of proportion everywhere. And ah se-

JARVIS: Well, did he know about- You said that, that CARROLL had come out here. Did he know about CARROLL coming out here?

FAIRCHILD: No, CARROLL hadn't come out here.

JARVIS: I thought you said just a minute ago that he had.

FAIRCHILD: No, I called CARROLL that evening before. CARROLL says he wants me to come up there and stay with DREW while he's being sentenced, see. Well, what it was, BUD and CARROLL had just got together, see. And he was gonna call DREW, and they were gonna get it all cocked up, see. And ah, and I would pay off 'fore it'd go through-

JARVIS: So they were both catching you in the middle between 'em.

FAIRCHILD: Yeah. Okay, that stopped, but ah WHITE, not long ago, and ah called one of WALLACE's, was, was gonna be one of LA-WALLACE's law partners.

JARVIS: This is GLEN WHITE, took BUD HOLMES' place?

FAIRCHILD: Yeah.

JARVIS: Okay.

FAIRCHILD: Ye called somebody and says ah you need to come down, said you represent DREW, but ah some connection between this lawyer and BILL PORTER some way. He says you need to come down here and file this thing ah for continuance. If it don't, it'll have to come up.

JARVIS: So, so WHITE's willing to work with you to keep the thing just kinda-

FAIRCHILD: No, that- I blew my stack then, see.

JARVIS: Oh, okay-

FAIRCHILD: And ah, I blew my stack then, and- Well I'd done told CARROLL, and the next, after it's over, I said see, I told you it wasn't a goddamn thing but blackmail. And I said shit, I don't ah, and ah I says five thousand dollar fine, and five years unsupervised ah sentence- I says hell, I had that fixed before through some friend with WILLIAM WINTER, if what I was telling was the truth. And ah, and I had somebody up in Jackson and talking with some people, and another, among other people was ah, was ah Governor ALLAIN about the, about the pardon, see.

JARVIS: Well, if you've got that, can you just tell CARROLL and HOLMES to take a, take a fly and leap now then, just chunk them out the window?

FAIRCHILD: Well, yeah, yeah, yeah. It's still they're trying to blackmail. Oh, yeah, I left out the main thing. But when I called ah DREW back and he called CARROLL and asked him about ah that gettin' it in federal court, and he said well DREW, that'll take a lot of research, says I've done a hell of a lot of work on this damn case, says I've never been paid a damn dime. And that's what, you know-

JARVIS: CARROLL-

FAIRCHILD: It's just a-

JARVIS: CARROLL INGRAM is, you know, he had said somethin' that I talked to MANNY about one time that I didn't tell you. But CARROLL is not your friend. You know that now though-

FAIRCHILD: Oh, hell, I've known it for years.

JARVIS: Okay.

FAIRCHILD: I haven't just now- I've known it for years.

JARVIS: Okay.

FAIRCHILD: Well, but ah-

JARVIS: Well, see, that's somethin' that, that scared me. When he was here- And remember we did that stuff to Judge NIXON-

FAIRCHILD: Yeah-

JARVIS: See this is what scares the hell out of me is, is that backdating for that year. I don't know how- I hope that's- You know, I don't know what that's got, and I don't wanna know-

FAIRCHILD: Well, ah-

JARVIS: But ah-

FAIRCHILD: We just, we, well-

JARVIS: Do you, are your records okay to-

FAIRCHILD: Well, now, I didn't know about the backdating.

JARVIS: Yeah, that was, remember when it came back from CARROLL's office.

FAIRCHILD: Yeah-

JARVIS: That ah, because it all came about DREW's time. Y'all, y'all had me do it back before then. Remember that?

FAIRCHILD: Yeah-

JARVIS: So if any question came up-

FAIRCHILD: Yeah-

JARVIS: 'Cause see, at that time, I didn't know it was going to the judge, and you just had me do 'em in blank, and then you-

FAIRCHILD: But the deal had already been made-

JARVIS: But see-

FAIRCHILD: We just dated it back to when it was made, see.

JARVIS: Okay, well that, that's what I was trying to figure, you know, not figure out, but make sure- 'Cause I don't want somebody coming in here saying well look at this. 'Cause that's the kind of stuff they're looking for. I, I think CARROLL help, left you hanging out there on that one, and I, you know, that's, that's-

FAIRCHILD: No, CARROLL was the one that ah, CARROLL was the one asked me to put the judge in a deal, see, I think. I don't, I can't remember who it was.

JARVIS: Well, CARROLL was the one that came out here and, 'cause you had me take all the stuff, and CARROLL was the one that kept calling me, telling me the judge wanted his money. And that's one of the reasons why I figured that they, that was part of the squeeze too. That's why I tried to talk to you two years ago about it.

FAIRCHILD: And BOB, that didn't have a damn thing to do with DREW.

JARVIS: Okay.

FAIRCHILD: Didn't nothing mention it in there.

JARVIS: Okay, well that, I was just worried for you.

FAIRCHILD: No, it, it wasn't nothing- It didn't have a damn thing to do- Was with, the, they, what- We hadn't got our money, and ah the well had been on stream, see. And that's ah not unusual for the damn well to be on stream for a year, see.

JARVIS: Uh-huh-

FAIRCHILD: And ah, and ah, but if it'd been a payoff, that'd been one thing.

JARVIS: Well, see, if they ask me about that, one, you know, if- I'm afraid that this might eventually go, you know, if they find enough stuff, they're gonna take it to a grand jury. And when they put us under oath, one of the things that's gonna come up is that those things were backdated, and that's why I'm sittin' here asking you, what are we, what do we do, and where are we going so we'll all go in the same direction. 'Cause, you know, you know what it looks like. What do you think?

FAIRCHILD: Well, I didn't know that the damn things were backdated. I didn't know that the damn things were backdated. Who could ah, who could ah-

JARVIS: Well, see, when it originally came up, you know, I did the things the date that it was and left 'em on your desk. You sent 'em to CARROLL's office, and then when I, they came back, you had put 'em in my tray. CARROLL sent 'em back here, and I think it was, I assume it was CARROLL that told you they needed to be backdated, 'cause you, that's what you told me to do, put 'em 'bout a year back, and, and we, we redid 'em- 'Cause see, SHERRY witnessed the first one that was the right date, and then when we redid 'em, we went ahead- I took her off and had BILLY sign that witness spot because SHERRY wasn't here then when, when the date was. So that's when you had me just put 'em back in the envelope and take 'em to CARROLL, and I, I forgot 'em until CARROLL started calling, wantin' to know where the judge's money was. So-

FAIRCHILD: Well, how would they ever know they was backdated?

JARVIS: If they contact a bunch of the employees, and they talk to SHERRY as a former employer, she remembers this-

FAIRCHILD: Well, her name ain't on it.

JARVIS: She's a former employee though.

FAIRCHILD: Yeah-

JARVIS: If, 'cause see, she was here during that time when, when all this was happening. Are she and DAVID still down in New Orleans?

FAIRCHILD: Uh-huh, yeah.

JARVIS: They might not find them then.

FAIRCHILD: Oh, I, I don't think they'll- They think that it was a- They're gone. They, they couldn't believe, they didn't think there was no instrument, see, that ah and asked for a copy of it. I said well you go over to the ah, Marion County, and go to Covington County, it's a matter of record up there.

JARVIS: I don't think we've got a copy of the recorded ones in the files here, 'cause it- You had me take 'em and give 'em to CARROLL, and that's the last I saw 'em. I don't think we ever got a recorded copy of 'em. So I don't think it, I, I think that you can honestly tell 'em that they can look in your files. I don't think they'll find it.

FAIRCHILD: Yeah, well, we told 'em this, the file, she got the file there and showed 'em where'd been mailing him a check.

JARVIS: What'd they say?

FAIRCHILD: Well, they, they said that ah, ah-

JARVIS: Wait a minute. You may have a problem on that too.

FAIRCHILD: What?

JARVIS: Back when I used to work in, with the city down there.

FAIRCHILD: Yeah.

JARVIS: I had to report everything that I owned. Do federal judges have to file- I don't know whether it was just-

FAIRCHILD: Oh, yeah, yeah, they told me, they got it, they went to the (unintelligible). Yeah, they got it. I knew it was, was gonna be reported.

JARVIS: But it's not gonna be reported when the instrument says- It's gonna be- See we didn't give it to him till eighty-one, and the instrument's gonna say somewhere- I think eighty. See, that's, that's what scared me to death. Now if they say that, okay, judge, you had it, but you didn't, you didn't report it, and he comes back and says well hell, I didn't get it till eighty-one-.

FAIRCHILD: Well, wait a minute, now what?

JARVIS: You know the, we, we made the deal- We, we ah conveyed all of the stuff to the judge in eighty-one, but, you know, y'all had me backdate it to eighty.

FAIRCHILD: Yeah.

JARVIS: If they look at his 1980 report and it's not on there, that, it's gonna make 'em dig that much deeper. Lord it- See, that's, that was what had me really worried about- 'Cause see, CARROLL was handling all this, it looked like, between you, and all this stuff that he did for you, he's got you hanging out there in the wind. And it scares me. That's what I'm trying to tell you. And that's why I wanted to sit down with you and say look, what, what do you want me to do?

I remember back when I was down in Lake City when they had that big thing come in where they got all those judges and stuff down there. Man, they did their homework before they ever went the first time. They may already know about this stuff.

FAIRCHILD: No, I tell you how it all come about. It'll ease your pain.

JARVIS: Okay.

FAIRCHILD: I got ah, I told JOHN BALTER (phonetic), he's a full-time lobbyist up there in the legislature, all about it, see, about the thing and all. He went to GEORGE PHILLIPS, and GEORGE PHILLIPS called the FBI top man there, and he called him, see. And that's, that's the way it come about.

JARVIS: Lord, lord, lord.

FAIRCHILD: And so it's ah- That's the way it come about. But I think when they get in here and find out that that stuff was on record up there and ah (unintelligible) on record up there. But they gonna find that on record back there.

JARVIS: Okay. Well, do they even know where they're looking, or they, or they- Well, I guess they'll look at his report, and it'll be on there, come to think of it-

FAIRCHILD: What kind of report?

JARVIS: If they're looking at the judge-

FAIRCHILD: Yeah-

JARVIS: Well now CARROLL-

FAIRCHILD: Well, there wasn't no intent on our part.

JARVIS: Yeah, but what I'm thinkin' 'bout- CARROLL is real tight with that judge. You don't suppose that was a squeeze play on you there, do you?

FAIRCHILD: No, I, I don't know what to expect out of him.

JARVIS: 'Cause what I'm thinking-

FAIRCHILD: You see, that was all DREW- You, day that this thing- DREW has already confessed.

JARVIS: Uh-huh. That's, that's what has- That's what I don't understand.

FAIRCHILD: Well, that's what- Couldn't have been a payoff there. He done agreed what would recommend.

JARVIS: Well, I'm, I'm wondering if CARROLL and the judge might have put the squeeze on you the way HOLMES and CARROLL are trying to do it now. Did-

FAIRCHILD: Well, I don't-

JARVIS: 'Cause CARROLL and that, CARROLL and Judge NIXON are tight, from what I understand.

FAIRCHILD: Yeah, but ah, I don't, I don't- Well it would, it would get, it would get ah, it would get ah, it would ah- I don't remember telling you to do that-

JARVIS: Yeah-

FAIRCHILD: I remember that ah, there was somethin' wrong with the papers.

JARVIS: Uh-huh-

FAIRCHILD: And that CARROLL wanted 'em.

JARVIS: Yeah. I think CARROLL was the one who, who came up with the idea of backdating 'em-

FAIRCHILD: Yeah-

JARVIS: If, if I remember correctly. But I'm wondering if they just might have used that to put the squeeze on you from another side.

FAIRCHILD: Well, now-

JARVIS: Did-

FAIRCHILD: Now Judge NIXON and CARROLL, no.. CARROLL, and 'nem, ah CARROLL and ah BUD, yeah.

JARVIS: Well, you suppose the three of them might be involved in it, they may all three be in the same-

FAIRCHILD: No, I mean just CARROLL and BUD and PORTER is the one that's involved. See, BUD told me to get PORTER for a lawyer, see.

JARVIS: Uh-huh.

FAIRCHILD: And, and CARROLL was gonna work behind the scenes, see.

JARVIS: What, what I can't figure out though is why in the world CARROLL is doing all the negotiatin' between you and the judge. That, 'cause it seems like the judge and you would just sit down over the table and you just bat, you know, you just bargain and horse trade and, and settle it like that. See, because CARROLL's involved is got my, you know, and then, then the way it's been handled, it's got you- Where it looks, it looks like it was paid as a bribe is what it really looks like.

FAIRCHILD: A bribe for what?

JARVIS: I don't know. See, that's why, that's one of the reasons why I just wanted to sit down with you and bat it around this afternoon. 'Cause they're, they're gonna corral me sooner or later, and if they start asking me, I wanna know what-

FAIRCHILD: I told that, that you, to, to get in touch with you.

JARVIS: Okay, 'cause they've been trying to get me, and I've been puttin' 'em off, and puttin' 'em off, and hidin' from-

FAIRCHILD: How long they been trying to get you?

JARVIS: They tried to get me Monday because I called MARGARET, and MARGARET said that you had gone to San Antonio, and you wouldn't be back till late. And then I, then I had hearings yesterday morning. I was over in, in court yesterday. So I was able to stay hidden. The, and then today I've been, been out of the office. ZACK's probably gonna fire me when I get back for being gone this much today.

FAIRCHILD: So-

JARVIS: Well, what, what do you want me to do, you know, when they talk to me, just, what do you want me to do?

FAIRCHILD: Well, I don't know. Now what, what do you think'd be the best? You don't know nothing about the deal.

JARVIS: All I know is that the checks were being cut to the judge, and CARROLL came up with the idea of backdating those things, and I don't know why. And-

FAIRCHILD: Well, do you think you need to tell 'em that before they put you under oath?

JARVIS: Well, I don't know. We're in the situation where I can't advise you as a lawyer. 'Cause I'm right in here in the, in the thick of this with you.

FAIRCHILD: Well, but we ah-

JARVIS: See, it-

FAIRCHILD: Well, if it comes right down to it, I don't know nothing about it, your, your backdating that thing.

JARVIS: Okay.

FAIRCHILD: If CARROLL told you to, I assume you went ahead and done it, see.

JARVIS: Okay, so you're not gonna bring it up at all then.

FAIRCHILD: No-sir-ree.

JARVIS: Okay.

FAIRCHILD: I'm not gonna bring it up at all.

JARVIS: Okay.

FAIRCHILD: And I don't think that you will. I don't think they'll have no way of-

JARVIS: Okay-

FAIRCHILD: But if his, if his damn reports down there ah show it, well, don't show it, well it'd be an oversight, see-

JARVIS: Okay-

FAIRCHILD: And they, they do that, see.

JARVIS: Okay.

FAIRCHILD: You reckon we better tell CARROLL or what?

JARVIS: I don't know. I don't trust CARROLL as far as I can throw him. I don't know if he might run down there. If, if he's dirty, he may wanna make a deal to sell you to 'em to save his hide. 'Cause see, if he gets, see, if he gets indicted for this, they take away his license to practice law. So not only does he get criminally charged, but he loses his profession. And that's why- He and BUD HOLMES have got that. And that's, that's why I was telling you that if you go to MARVIN RUBIN- You know, these, they may wanna play hardball, and I'm not talking about just talking.

FAIRCHILD: Well, I'm dumb in some ways, maybe stupid in a few ways, but ah I would ah-

JARVIS: I just want you to be careful.

FAIRCHILD: I would ah be fool enough to not to, to not get into that jam.

JARVIS: Okay-

FAIRCHILD: But now CARROLL, he is not, he is not, he's too involved for this thing for anything to come about, see.

JARVIS: I don't think he could help you. I mean, I don't, I think he'd be too busy covering himself to be able to do you any good.

FAIRCHILD: Oh, hell, yeah. But they were so sure in ah, cock sure in everything, and ah, and ah they, they made a remark, well, you got us into this this morning. I said ah-

JARVIS: BALTER got you into it by opening his mouth or, you know-

FAIRCHILD: I knew he was going to GEORGE, but what I was hoping that they'd come down here and talk to me, and I'd say that ah, that ah BILL PORTER sent BOB ROYAL to me and ah they go talk to BUD, see, and let 'em know that ah, and ah, and I told 'em that this morning, and they just kinda laughed.

JARVIS: They were here this morning?

FAIRCHILD: Oh, yeah.

JARVIS: (Unintelligible)

FAIRCHILD: Well, they were so, they done talked- This is the third time they talked to me, this morning is.

JARVIS: I tell you what, when I got that phone call Monday and they told me they wanted to talk to me, scared me to death. I don't mind telling you.

FAIRCHILD: And I let 'em have this, this thing. You see what they, what makes, what, what makes the whole thing, see, it's not the fact that ah, that, that, of judge was gonna, being bribed. What, why, what happened, they already had this thing, and I didn't know it till they told me this morning, and that's why it looked suspicious, that DREW was gonna testify a, against three fellows, and ah they already sentenced them three fellows, and they turn around and not do nothing, see. And, and I said well I can understand why, but why he didn't do nothing- Well, I think that CARROLL INGRAM and BUD HOLMES talked to, to, got him to sit on it, see, and ah got him to sit on it.

JARVIS: Well, have you actually paid CARROLL or, or HOLMES anything yet, or-

FAIRCHILD: No, hell, no-

JARVIS: Okay, they're just puttin' the squeeze on you-

FAIRCHILD: Listen, now the other day when this thing happened, the other day, it was just 'fore he went out of office, CARROLL told DREW, said I've done a lot of work on this, and I hadn't been paid a dime, and, and ah that was lettin' him know he was expecting some money then. I give BILL PORTER ten thousand dollars, and I told 'em about that, see. And ah-

JARVIS: Well, is he, was, was PORTER working with CARROLL- Were they working together on DREW's defense or-

FAIRCHILD: Well, he said that it was in a memorandum I give to the FBI. They, hell, they ah- He made a statement that, DREW did, handwritten statement that ah- Well, somehere that ah it's a desk that I don't ah, that I don't ah tend. I work behind the scene, see.

JARVIS: Yeah, we see how he works behind the scenes.

FAIRCHILD: And ah, and BILL PORTER, see. 'Course, yeah, this is all- It's saying something that they stirred up, and it's something that ah I actually stirred up myself.

JARVIS: Well, I-

FAIRCHILD: But hell, if I'd been any bribery in it, this thing, ah, ah, would it been any intent or any bribery, and it just wasn't no intent of it, see.

JARVIS: Well, you know, I- That's why I came to you, just me and you, 'bout two years ago, and I know I made you mad by bringing it up, but ah, you know, couple of 'em in the office had asked me about it.

FAIRCHILD: About what?

JARVIS: About those payments to Judge NIXON. That's, that's one of the reasons why I came to you and said we need to keep everything in-house and quiet. 'Cause I didn't know, and, you know, you know how rumors get started-

FAIRCHILD: Yeah-

JARVIS: That's-

FAIRCHILD: Well, well I'm glad you come out then, and I'm glad you're concerned about it, but somehow or another, I'm not.

JARVIS: Okay, everything's okay then?

FAIRCHILD: Yeah.

JARVIS: Okay, 'cause I, like I told- I don't know if MARGARET told you that I called, but I told her I didn't wanna talk to 'em till I had a chance to talk to you and see-

FAIRCHILD: Well, she didn't tell me that-

JARVIS: Well, let me tell you- I called her back and told her not to tell you 'cause I didn't want you worried about it-

FAIRCHILD: Yeah-

JARVIS: Till I could just get a hold of you myself. 'Cause you, you hadn't come in yet from San Antonio. And I, I just been puttin' those folks off till I could talk to you. So you want me to talk to-tonight and just not say anything about that backdating, just be quiet, huh?

FAIRCHILD: Yeah, just say, and don't mention that backdating, and ah, but ah-

JARVIS: 'Cause I think that's your weak spot right there. Well, let me get back to the office so I can- Hopefully I can sneak in the back door, and ZACK'll think I been over to the courthouse all this time-

FAIRCHILD: What ah, is- They wanna talk to you tonight?

JARVIS: They've been calling over there at the office two or three times. You know, I, I was gone both yesterday and today.

FAIRCHILD: Yeah.

JARVIS: And I come back, and there'd be messages there that they've called, and they're trying to get in touch with me. They wanted to sit down with me, and they said they'd come out there at night. And I got a sneaky suspicion that they're probably gonna show up out there any, any, any night now.

FAIRCHILD: Well, they probably will. They probably will.

JARVIS: Did they ever come to your house, or did they just come down here?

FAIRCHILD: No, they called me and made an appointment. They went to MARGARET's house, see.

JARVIS: Oh, well I'd rather-

FAIRCHILD: Firt (unintelligible) MARGARET got some ah information for 'em and give to 'em, see.

JARVIS: Okay.

FAIRCHILD: And they just went-

JARVIS: Well, I'd kinda rather they came out to the house, 'cause it's, it's gonna look kinda bad. I haven't been down there a month, and all of a sudden I got them coming in there.

FAIRCHILD: You've got their number, haven't you?

JARVIS: Whose number?

FAIRCHILD: The FBI's number.

JARVIS: No, I, I, I'll get out of the phone book. Just, I'll just, just call 'em and tell 'em I guess they can come on by and see me. You want me to keep you posted?

FAIRCHILD: Oh, yes, sir-

JARVIS: Okay-

FAIRCHILD: I wanna know what's going on.

JARVIS: Okay. In the meantime, just between me, you, and these four walls, be careful. Now you had asked me about contacting DREW. I don't know if I would. 'Cause if it happened like you said and they, you know- What I'm saying is you said somethin' to BALTER, BALTER goes to GEORGE PHILLIPS, and you, you were trying to get him off your back-

FAIRCHILD: Uh-huh-

JARVIS: If you say somethin' to DREW- I mean not to DREW, but to CARROLL, you may wanna think about that first. Have you talked to a lawyer at all on this?

FAIRCHILD: Oh, yeah, yeah- No, I've not talked- I want nobody to know about that, that JOHN BALTER went to- I hadn't even told RODNEY. I hadn't told-

JARVIS: Okay-

FAIRCHILD: You, but you're so concerned see, and you're just, you, you thought they went out there and dug all this up themselves.

JARVIS: Well, I thought they had enough, I, I thought they were ready to come here like they did in Lake City-

FAIRCHILD: Yeah-

JARVIS: I been through it one time, and it scares me.

FAIRCHILD: Well, my conscious is clear, and I ah, old ah Governor WALLER is drawing a damn check that ah, that some stuff that I gave him, and ah, and ah, and (unintelligible) it wasn't no payoff, and, you know- My conscious, hell, they may wind up, do somethin' about it, but ah, but goddammit, I may have violated the law, and, but ah, but the intent wasn't there, and I just don't think there was- I just don't think there's nothing that they can do about it. Ah-

JARVIS: Well, have you, you said you wanted that, but you said something to BALTER to talk to PHILLIPS to get them off your back. Have you thought about just going to 'em and, and seeing if they'll, if they can get them off your back. Of course, you know-

FAIRCHILD: Going to who?

JARVIS: You said the FBI was here. Have you thought about just seeing what they can do to shut CARROLL and BUD HOLMES down? 'Cause if, it's gonna, you know, if- To do that, it's gonna take a grand jury and the rest.

FAIRCHILD: Well, I know it, it's gonna take somethin', and ah-

JARVIS: You thought-

FAIRCHILD: Well, the first time I, they was here, I said if y'all want to get something, I said you oughta be investigatin' how much money that BILL PORTER owed, who was on them notes and, and didn't they have life insurance on 'em. They said well they'd been checking into that.

JARVIS: Well, somebody asked me one day if ah, if HOLMES might have had something to do with that. Do you suppose he did?

FAIRCHILD: I'll die believing it. Oh, shit, you don't, you don't dive down there three times and it already dark and mucky water and say well he's not in there, and swim a damn live with your clothes on. No, it's impossible.

JARVIS: Well that's, see that's what scares me, that, you know, if, if any of this leaks out, you- Have you told MARGARET to kinda keep this under her hat? Have they talked to anybody else that you know of?

FAIRCHILD: Um no, no.

JARVIS: Okay.

FAIRCHILD: What ah, if what leaks out?

JARVIS: You, about what's going on that BALTER told them what you had said.

FAIRCHILD: No, she don't know that ah-

JARVIS: Oh, okay, so I'm the only one that knows that.

FAIRCHILD: You're the only-

JARVIS: Okay-

FAIRCHILD: I told the FBI that, see.

JARVIS: Okay. You don't suppose that they'll- Well they, are they gonna keep that kinda in, in their- Who, who was it with the FBI that you talked to? Do you remember who they were?

FAIRCHILD: Ah-

JARVIS: I'd kinda like to know so I, so I know-

FAIRCHILD: It'll be the same two that I talked to here.

JARVIS: Oh, okay.

FAIRCHILD: It's ah, ah- Had the two names. I've got 'em in the office. I got 'em in this book.

JARVIS: Now is his name WHITE or SPUNNER or-

FAIRCHILD: Ah, SPUNNER-

JARVIS: SPUNNER, okay. Okay. Now I'll know, if they come out, now I'll knew if they're the same ones that talked to you or whether, whether they've got some more in here.

FAIRCHILD: You want that to get to, to call 'em?

JARVIS: No. I'll go back to the office and just call 'em and tell 'em to come out after dinner tonight. I might send PAM and the kids off somewhere. 'Cause I know it's gonna scare PAM to death when the FBI comes to the house. Well, let me get back-

FAIRCHILD: Well, ah, I can understand where you are. I was asked to do ah WALLER a favor, see, and I can understand, and ah-

JARVIS: Well the only thing-

FAIRCHILD: And I'm telling you that I was asked, or I was- Well, well I don't remember who, but anyway, I went ahead and done it, and ah if it'd been JOE BLOW or somethin' 'nother, I, I- Very few people knew WALLER calls all the time, wantin' to get in deals, see-

JARVIS: Right-

FAIRCHILD: And other people want, and you know that, see.

JARVIS: Right.

FAIRCHILD: And ah, and they just (unintelligible) people go in there, and certainly I'd rather do somethin' for a governor. I'd rather do somethin' for a judge or a prosecuting attorney- No, a judge, period. I'd rather [illegible] somethin' for them than the average fellow. Because they're the ones that can help you if you ever need it.

JARVIS: Right.

FAIRCHILD: But what you was, what, what they don't know, but at that, me and, back at that time hell, me and DREW wasn't hardly on speaking terms.

JARVIS: I remember that.

FAIRCHILD: We weren't hardly on speaking terms, and ah-

JARVIS: That's why it surprised me when, when CARROLL was here and all this switchin' and swappin' was going on, and, you know, I- That's, that's one of the reasons why I was walking around here just not knowing what in the hell was going on.

FAIRCHILD: Well, well, I told 'em that, that, that me and him wasn't on good terms at that time. Hell, we wasn't. We wasn't even, we wasn't even visiting, speaking, or nothing else at that time. And, and I told them when that plane landed there, I was, I'm still that damn fellow today that I was, and I ain't changed a bit. If I was a shit ass then, I am today. I haven't changed a bit.

JARVIS: Well then if, if, if we get rid of CARROLL and, and HOLMES, then everything, you got, you got that taken care of up there in Jackson then, right, on the State stuff?

FAIRCHILD: Yeah-

JARVIS: Okay-

FAIRCHILD: Yeah, well-

JARVIS: Okay.

FAIRCHILD: And ah if all- I'm, I'm led to believe- I'm like before, if what I'm saying happens, it would happen, see. And ah, and ah, and it'll be over with, see.

JARVIS: Okay. Well, changing the subject just a minute- Did you get the letter I wrote you by-

FAIRCHILD: Yeah-

JARVIS: Okay. I, I got bad feelings on that CLINTON V. MORGAN thing, and ah I'm gonna speak out, and I shouldn't speak out the way I'm going to, but I, either WALLACE doesn't understand the argument-

FAIRCHILD: No, if you went down there and talked to him, he called that fellow up and ah, and WALLACE, he told WALLACE to write him a letter, said we, neither one, don't have a clear cut. He's changed his views on it-

JARVIS: FOXWORTH, RICHARD FOXWORTH up-

FAIRCHILD: Yeah.

JARVIS: Okay.

FAIRCHILD: He's, he's, he's changed his views a hundred percent. He says we do have- And he said you had a good point, said you had an excellent argument there.

JARVIS: Oh, I wish WALLACE would have listened to me two years ago.

FAIRCHILD: Yeah. Well, he's ah, he's, he's hardheaded, and we all are in a way, but ah-

JARVIS: I know-

FAIRCHILD: But ah-

JARVIS: I, I admit-

FAIRCHILD: He's ah-

JARVIS: Well now is he gonna move back into the building that you're remodeling down there?

FAIRCHILD: Uh-huh, yeah.

JARVIS: I, I went in there. He really kinda hurt my feelings, 'cause I originally approached him about practicing law with him, oil, doing oil and gas stuff-

FAIRCHILD: Yeah-

JARVIS: And he told me that he, he only wanted to go, he only wanted to practice by himself, and I found out he's taking MILTON SCELESINGER and JOE BUSH in with him. And I told him, I said yeah, I told you I-

FAIRCHILD: He's going (unintelligible). He's got more.

JARVIS: Well, I knew he was taking those two in, and I, I mentioned that to him when I went down there. All he did was sit back in his chair and smile. I thought he was afraid I was gonna the FAIRCHILD business away from him.

FAIRCHILD: Ah, now he got some clerk of the Supreme Court, didn't he?

JARVIS: JOE BUSH.

FAIRCHILD: Well he's, he's a good, he's a good clerk though, ain't he? He's-

JARVIS: You'll, you'll see, 'cause he, he'll- If, if he's with WALLACE, he'll be, he'll doing some work for you. JOE went, I had several classes with JOE up there. Well, I know ZACK was interviewing a girl that was DAN RUSSELL's clerk, Judge RUSSELL, the federal judge. He's gonna interview her to bring her in there to work with us.

FAIRCHILD: Has he got a pretty good practice?

JARVIS: Ooh, I tell you what- It's, they got me jumping. I got sworn in Friday afternoon, and I was in court yesterday. You know, it's, they keep-

FAIRCHILD: Had court yesterday?

JARVIS: Uh-huh. I was sneaking out today. I had to do some research down here at Southern, 'cause we didn't have- He's got a good law library down there, one of the best I've seen in Hattiesburg, but he didn't have the set of case books that I needed, so I slipped out today, you know, going down there to Southern, and that's where I'm supposed to be right now is over here at Southern's law library.

FAIRCHILD: Uh-huh-

JARVIS: (Unintelligible) The first day that I went to work with him, that very first day he had, had me over in, we were in court in Marion County on a railroad suit. Just, they got me hittin' the ground runnin'.

On that other stuff, you know, I told you, the letter- I'm trying to figure out- I've been pulling ~~out~~ all that Internal Revenue stuff and State taxes, and I'm trying to figure out some way to balance that out. It, you know, you already know it's gonna cost you to do what you wanna do, but ah if I can come up with somethin', I'll lay it out and then, you know, then let you tell me what you think when that time comes.

FAIRCHILD: Okay. Okay, I appreciate you coming by.

JARVIS: Okay. I'll keep you posted if, if this-

FAIRCHILD: Yeah, give me a call if they come out tonight.

JARVIS: How late you gonna be up?

FAIRCHILD: Oh, I'm on the water wagon now. I don't go to sleep until ten-thirty or eleven o'clock.

JARVIS: Okay. You back off that. You quit the VO again?

FAIRCHILD: Oh, yeah. Yeah, I been off of that.

JARVIS: That's good.

FAIRCHILD: So-

JARVIS: Okay, I'll let you know-

FAIRCHILD: But this thing, ah, ah, ah, if I've told any truth in my life, this thing that ah, this thing was already happened- It couldn't be- Now what they have done, (unintelligible). They're thinking that NIXON, maybe, talked to, to ah, ah GEORGE PHILLIPS to get it pulled down here in court. Well, why would I wanna talk to Judge NIXON to, to do that? Why would I want it down here, and why, hell, ah-

JARVIS: Seem like you'da gone straight to GEORGE PHILLIPS if you're gonna do that-

FAIRCHILD: Yeah, I'd go into- Well, I, what they go to CARROLL. Well, (unintelligible) CARROLL, and ah I've talked to GEORGE PHILLIPS. Don't, but, won't, wasn't you here when me and CARROLL went up there and talked to GEORGE PHILLIPS, and they had me before a grand jury up there?

JARVIS: Uh-uh. When was that?

FAIRCHILD: You were here. It was here, 'bout the, about the FINCH thing. About-

JARVIS: Yeah, I remember that, sure do. I was thinking it had something to do with this.

FAIRCHILD: No.

JARVIS: Okay.

FAIRCHILD: Yeah, but I got him. If, if, and if you can, you, if you'll just tell 'em that, that they had me on the charter of this bank, ah the FBI men, did, and I carried CARROLL up there, and ah CARROLL ah went back there and talked to 'em, and ah, and I told CARROLL I wasn't worried with 'em unless it's something that happened about twelve or fifteen years ago. They said well, it wasn't that, and what it was, into the bribe business. Everybody had a bribe didn't get a charter, see, and what I had done, ah SIMS led him to believe we'd give him some stock, see.

JARVIS: Uh-huh-

FAIRCHILD: Well, SIMS didn't wanna do nothing about it, and there wasn't no stock, so we hadn't done nothing, see, and I knew better, bygod. What he was doing, he was gonna ah get ah caught. So if that would have happened, and you can tell 'em that, if I'da wanted to do something, I'd just got CARROLL to go up, but what I think, I think CARROLL and BUD HOLMES went to him and got him to lay low where, let 'em come back there and indict where they could get a big bribe out of it.

JARVIS: That's an idea.

FAIRCHILD: That's exactly what I think. And well, I, I can't be bribed so it didn't work, see. And I think ah, I think that ah- I don't think GEORGE PHILLIPS can be touched.

JARVIS: I don't know GEORGE PHILLIPS. I, I don't know.

FAIRCHILD: Well, I don't think he can be touched, see, but anyway you've got the good picture of it now, and I think you'll-

JARVIS: Okay, I'll-

FAIRCHILD: Feel better after you talk to 'em.

JARVIS: I'll call 'em back from the office, and after-

FAIRCHILD: Okay-

JARVIS: After they come out there, I'll give you a holler at the house.

FAIRCHILD: Okay.

JARVIS: It's now 4:15. I'm leaving FAIRCHILD's office.

END OF RECORDING

DEFENDANT'S EXHIBIT 17A

MARIE FAIRCHILD: Hello.

R. L. JARVIS: MARIE?

M. FAIRCHILD: Uh-huh-

JARVIS: This is SKIP. Is Mr. WILEY around?

M. FAIRCHILD: Yeah, just a minute, SKIP.

WILEY FAIRCHILD: Yeah.

JARVIS: Hey, I hope I caught you during the sports. I called over there, and they, they said that they were gonna be tied up tonight, and they weren't gonna meet with me tonight, ah that they wanted to get back with me some time tomorrow-

W. FAIRCHILD: Uh-huh.

JARVIS: So I don't know what time they're gonna corner me. Listen. There's, there's one thing I wanna ask you though before they talk to me.

W. FAIRCHILD: Yeah.

JARVIS: You know, you said they were asking about that stuff on NIXON. If- I don't know how much that royalty is producing, but it can't- Is the cost those twenty-five hundred dollar notes. Is that anywhere in the ball park what that stuff was worth?

W. FAIRCHILD: When the deal was made, when we, when the verbal deal was made, hell yeah.

JARVIS: Okay. I just, you know, I was thinking about that. I didn't know how much that stuff has paid him since then. They may come back, you know, take a look at those notes.

W. FAIRCHILD: Well, you don't know nothing about what that ah- You don't ah-

JARVIS: Okay, you just want me, you just want me to handle it like that.

W. FAIRCHILD: Yeah, but ah, but ah, but it's like it's happened so many times. A deal is made way before everything is, the papers is drawn up, see.

JARVIS: Oh, okay.

W. FAIRCHILD: And ah, and ah, but I assure you the deal was made when that was, that was legitimate, see.

JARVIS: Okay, now, are you gonna be 'round most of the day tomorrow? 'Cause-

W. FAIRCHILD: All day.

JARVIS: Okay, I'll call you just as soon as I meet with them, and I'll let you know what, what happens. Okay?

W. FAIRCHILD: Okay, good.

JARVIS: See you tomorrow-

W. FAIRCHILD: All right.

END OF CONVERSATION

JARVIS: My name is ROBERT L. JARVIS, JR. The foregoing conversation was a telephone conversation between myself and WILEY FAIRCHILD, made at approximately 5:54 on April the 18th, 1984.

W. FAIRCHILD: Well, you don't know nothing about what that ah- You don't ah-

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JARVIS: See you tomorrow-

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COMMITTEE EXHIBIT NO. 22

DEFENDANT'S EXHIBIT 43A

WHITE-SPUNNER: This is ah SA K. P. WHITE-SPUNNER, JR., and the time is ah 3:40 PM. This is April the 19th, 1984, and I'm in the chambers of U. S. District Court Senior Judge WALTER L. NIXON, JR., Chief Judge WALTER L. NIXON, JR., ah with REID WEINGARTEN of the U. S. DEPARTMENT OF JUSTICE, and we're all knowledgeable and agree that this conference will be tape recorded.

WEINGARTEN: What, what is your relationship with WILEY FAIRCHILD, if, if you don't mind my asking.

NIXON: Well, the only relationship with him is ah I know him and have known him for some time and ah have ah made investment with him ah in ah three oil wells, three, three wells, and ah one is, two are producing, and one ah is ah not producing (unintelligible).

W: Is it fair to describe him as a friend?

N: Not a- Well, I don't know whether you'd call him a friend or an acquaintance. He's not unfriendly, but he's not a, a close friend-

W: Have you been to his house-

N: No-

W: Has he been to your house?

N: Definitely not-

W: Have you been to his business?

N: I've been there just in connection with this, yes.

W: Okay. How long have you known the man?

| | |
|---|---|
| N: | Well, I've known of him for years, but I really know him as well as I do now, I guess, for the last ah, well, about the time that I made this investment or shortly before. |
| W: | Okay, why don't you just begin- |
| N: | Shortly before- |
| W: | How did the investment come about? Why don't we start there- |
| N: | Ah CARROLL INGRAM, ah, ah- |
| W: | Who is he, why don't we identify him? |
| N: | He's an attorney in Hattiesburg. Ah CARROLL ah and I were talking, and ah I, ah- We got to talking about ah, I think ah investments in oil and gas of some production he had of something. And ah I told him I would be interested in ah, in ah investing some time, and, you know, and go with him on something if ah, with my own fair share, putting up my money, and if, if he found out that it might be, look promising, in, in order to supplement my income as United States District Judge.<br>(Answers telephone) Uh-huh. Okay. I'll ask these gentlemen to excuse themselves then for a minute. Would you excuse yourselves a minute, please, gentlemen (unintelligible). |
| W: | Excuse- |
| WS: | Uh-huh. |
| W: | When we broke last, we ah, you explained to us how the, it was the evolution of ah your involvement with royalties- |

N: That's right-

W: Please continue.

N: Well, that's about the size of it, and two of the wells were fine. The other one wasn't worth a darn.

W: All right, what were the circumstances that got you involved with Mr. FAIRCHILD?

N: Well, CARROLL INGRAM told me he was investing in them or investigating, and I think he, he ah apparently represents him, and I think they're real close friends, from my understanding, maybe some kin. I'm not sure. Senator INGRAM, former Senator CARROLL INGRAM.

W: Is he your lawyer, Mr. INGRAM, in any respect?

N: Is he what?

W: Has he ever represented you?

N: Oh, no, uh-uh.

W: Ah, did you actually meet with Mr. FAIRCHILD and discuss the ah-

N: Uh-huh-

W: Investment?

N: Yes.

W: Can you describe that?

N: Oh, not ah, in detail, except we talked about it. He's, he's a hard man to talk, ah understand really. He kinda talks sometimes in riddles, and I don't say that derogatorily or in a disparaging manner, but ah he just said well ah there are gambles- If I wanted to go with it, fine. And I told him well CARROLL recommended 'em, so I was willing to gamble. So I borrowed the money, and I invested, and ah instruments were executed (unintelligible).

W: Okay. Ah, where did this transaction take place, at his place of business?

N: I don't remember where it was finalized, but ah that's where we talked, yes, uh-huh.

W: Ah, generally speaking, what were the terms. What did you give and what did he give?

N: I think with the, it was broken down. If I had my records before me- It was ninety-five hundred dollars for the three.

W: Okay-

N: Investments.

W: Ah, do you remember when all this took place, the dates (unintelligible)-

N: No, I do not, but it was a few years ago. I say, maybe two or three.

W: Let me ah show you-

N: The instruments are recorded, and, of course, they speak for themselves-

W: Sure. The instruments ah, of course, are royalty fees-

N: Uh-huh-

W: I think I just have two. Why don't you take a look at these-

N: All right-

W: And see if these (unintelligible) with your- I'm, I'm sure they do, just to be formal about it.

N: (Unintelligible) Time flies. I guess that does figure-

W: Is that accurate? I mean, you're gonna- I'll, I'll explain to you in one second why the dates are important, but is it your recollection that you received those in February, 1980?

N: No, I don't remember exactly when. Ah, I would- I'd just be guessing. I don't recall.

W: Ah, as best you can-

N: I think the-

W: I know a million things have happened to you since February, 1980-

N: There have.

W: Ah, do you think four and a half years have passed since you received those deeds?

N: I don't know whether everything was finalized in writing at the time or not, or whether it was subsequently put into writing to, to, to, to comply with what had taken place. I don't recall, honestly.

W: Sure.

N: I honestly don't-

W: I know it, when you-

N: It was somewhat unorthodox though. I

recall that.

W: All right. What was unorthodox about it?

N: The, the whole deal- I mean, you know, the, what, the time between the, the whole discussion with him and the investment, and I didn't know whether it was ever paying off or what was happening for a while, and, and ah it started out very good. I think it was about, bringing about seventeen hundred dollars a month, and then now I think it's down to about eight or something like that. And one of 'em just didn't pan out at all.

W: Have you ever invested in oil and gas prior to this?

N: No.

W: So this was brand new.

N: It was brand new to me.

W: And, were you relying on the representation-

N: I say no. I think when I was practicing law some seventeen or eighteen years ago- I've been on the bench almost sixteen years. That was a, we supposedly had a producer, but our, my cost of the expenses was more than what I was getting out of it-

W: So that was unsuccessful-

N: And I thought I'd never do it again, but I-

W: Well whose counsel were you relying on as far as this investment?

N: CARROLL INGRAM.

W: Not Mr. FAIRCHILD?

N: No. I say, not ul- I guess ultimately I was, you know, but ah CARROLL just ah assured me that Mr. FAIRCHILD had been very successful in the oil and gas business, and he thought it would be a good investment.

W: Okay. Let me show you some promissory notes that-

N: Okay-

W: You've collected now.

N: Okay.

W: Ah, should be of some importance too. I believe there're three, and I think you've described what-

N: Okay-

W: Added 'em up to ninety-five hundred dollars, and that certainly is what those three documents add up to.

N: Okay.

W: It, to your recollection, is that, are those the documents?

N: Ah, I would assume so. That's my signature on them-

W: Sure. And again, the date is February, eighty.

N: That's right.

W: Is that when you incurred the liability?

N: I don't recall whether the liability was incurred- I say the liability- the word was given or or, or the transaction was completed. I don't know whether it was simultaneous with this or not. That's why I'm saying it was something unorthodox about the- Because I was so busy. I don't know whether it was ever put into writing or exactly what did occur, frankly.

W: All right, the fact-

N: One of the, one of the biggest shortcomings and faults I have is I don't, I'm, I don't devote as much time to my business and financial affairs as I should because of my judicial duties, and that's been a real problem with me, I think.

W: Well, is, is there a possibility that in fact the transaction that is presently in your hand the, the purchase of these royalties occurred a year later in February, eighty-one?

N: Oh, no, it couldn't have.

W: Ah, do you remember any discussion of backdating the documents to February, eighty?

N: No, I don't recall whether there was or not. I, I think I would, but, but there was such a- I don't know.

W: To, in an effort to resolve this without troubling you-

N: Okay-

W: We received your financial disclosure report-

N: Uh-huh-

W: Which you filed with the court, like every other federal judge-

N: Uh-huh-

W: And every other congressman, and, and many federal officials, as a matter of fact.

N: Right.

W: Ah, the FAIRCHILD-

N: Including, including Mr. MEESE.

W: Including Congressman GEORGE HANSEN who I just prosecuted-

N: Oh, yeah, uh-huh-

W: (Unintelligible) The ah, what we noted is that the statement that you filed in eighty-one-

N: Uh-huh-

W: Reflecting your financial activity in eighty-

N: Uh-huh-

W: Does not include the FAIRCHILD business.

N: I don't know why it wouldn't. The CPA must not have picked it up. Did the following one reflect it?

W: The following does, I think-

N: Well I, I guess that's ah- My CPA, unfortunately, is deceased now. I could talk to him- CHARLES LOGAN. He died of a heart attack in, in his forties-

W: I hope not doing your business-

N: No, I hope not too. It wouldn't, my business wouldn't have taken him that-

W: All right, let me just explain-

N: (Unintelligible)

W: On eighty-two-

N: Uh-huh-

W: Apparently what happened is you filed the statement and you described oil and gas ah interests in general, and I guess Judge TAMM from the Judicial Ethics Committee wanted more specificity-

N: Uh-huh-

W: And then there are included the overriding royalty interests of W. R. FAIRCHILD CONSTRUCTION COMPANY, LIMITED, which, I presume, are those interests.

N: I would assume-

W: You have any other interests with FAIRCHILD?

N: No, no, no.

W: And it indicates that the date that-

N: The three wells, okay-

W: Right-

N: Okay-

W: The date that they were purchased was February 25th, 1981, not 1980.

N: I don't know, unless the wrong date is on here, year-

W: Okay-

N: I, I don't know. I- As I say, I don't recall eighty, or eighty-one, or what, but if they- I just don't- I frankly don't recall whether this is the correct date or, or what.

W: Okay, without suggesting any impropriety on your part, believe me, we're not suggesting that by this question, but we have reason to believe that in fact you incurred liability, and you received the royalty deeds ah well after February, eighty, the reflected time of those documents. I mean, is there a reason that you know of that that may have taken place?

N: Not that I can recall.

W: We have checked ah where the deeds are file-

N: Uh-huh-

W: And they are filed of record long after February, eighty, in fact, in some instances not until eighty-two.

N: Well, that would, I guess that would be my fault because-

W: I don't know, I'm not saying, I'm not suggesting it is-

N: Ah-

W: It could be someone else's fault-

N: I could have, I could have just overlooked it, or it could have been overlooked. I, I don't know, but I guess- Well, as I told you, I'm not the best businessman in the world, and because of the pressing judicial duties, many times I neglect my own personal financial affairs-

W: I mean, frankly what we're looking for is, is-

N: Frankly-

W: Of, for why this- If it in fact happened, why it happened, so that we can put this to rest.

N: Right. I don't know.

W: Would anyone know that we could- I mean, would CARROLL INGRAM know?

N: I don't know that. I could ask him.

W: Well probably, it- I mean, if we're gonna conduct the investigation, it'd probably be more wholesome if we do.

N: Well-

W: I mean, and, and I, I don't know-

N: That's your, that's your prerogative-

W: Sure, I understand. Ah, when you mentioned the word unorthodox, I thought perhaps the explanation was gonna follow as to why this would have occurred.

N: No, I don't recall one way- I, I really don't.

W: Do you recall when you started receiving royalties?

N: No, I do not.

W: Would there be records that would reflect that? I suppose there would be.

N: Sure, certainly.

W: I mean, we don't have the complete records, but we think you didn't start receiving royalties until eighty-two.

N: Well maybe- I don't know. Maybe these were- Maybe- As I said, the date may be wrong on these. I don't know.

W: Okay. I don't know if this will help or not. We pulled the royalty division order which, I suppose, triggers the, the payments. They reflected January 13th, 1982.

N: Uh-huh.

W: I mean, does that help anything?

N: I do seem to recall that there was some problem with the division or, or getting the division orders or something, and I don't recall what it was, very frankly.

W: Maybe this will help. When you, when you would receive your royalty payments, would they come from FAIRCHILD, or would they come from EXXON or TEXACO-

N: I think they came from FAIRCHILD.

W: Did that have anything to do with the problem?

N: I don't know, and I honestly, you know, I, I just don't know. If I knew, I'd certainly tell you.

W: Sure.

N: That's what I'm talking about. All the, when I say unorthodox, it, it was- The division orders came later or some reason. Ah, I don't recall whether it was the ah, but I think the checks were coming from FAIRCHILD, and they may have been- I don't know whether they were coming later or what, or whether-

W: Did they continue to come-

N: It was before-

W: I mean, is this an ongoing situation? Do you still retain-

N: Yes, yes-

W: Those interests?

N: Yes, I do.

W: Do you have a clue- As you sit here, what the total, ah, the total amount of money you received on the three wells?

N: No, I don't. It could be easily reconstructed though-

W: I mean, would it be considerably more-

N: All by check-

W: Than the ninety-five hundred dollars?

N: Oh, yes, by this time, certainly.

W: And is, is there an expectation that these will- I mean, I think you described one as a bomber, and-

N: There's a hope.

W: There's a hope.

N: There was an expectation, a very great expectation that it would continue to ah bring in the income it originally did.

W: Are all three wells-

N: That's, that's-

W: Stinkers or-

N: No, ah one, one was a bad one, and the other two were pretty good. That's what I said, but the, but I guess it's because of the ah industry in general, like the ah- I don't know whether they were ah, whether the production was cut back or whether no sale for the products, or exactly what it was, but ah the ah, the ah- I think I'm receiving now about half of what it was originally bringing, those two ah-

W: Okay, I mean frankly ah part of the allegation-

N: I was disappointed too-

W: Well part of the allegation was received was that it was a gross imbalance between what you paid for and what you received. Now do you have any comment on that?

N: No, I don't. That's, I, I'm not familiar with the oil and gas business, and I hoped that it would be a good business investment, and it has been a pretty good investment, ah one of the very few that I've made outside of my judicial, I mean, have made period-

W: Who-

N: That's ever paid anything.

W: Who would you say would have been the moving party to get you interested in these particular leases. Would it have been Mr. INGRAM-

N: Yes-

W: Or would it have been WILEY FAIRCHILD-

N: CARROLL INGRAM. He's the one I talked to about it and asked about it. I didn't have any, any dealings at all with or previous dealings or connections with WILEY FAIRCHILD.

W: And who would have selected- I'm sorry-

WS: No, go ahead-

W: Who would have selected the actual site- I mean, I'm sure you didn't know the actual property or visited the actual-

N: No, I didn't-

W: Property you purchased- Who was responsible for that?

N: CARROLL INGRAM. I guess. I don't know whether visited it or anything, but he told me that he thought it was a very good investment, and could guarantee nothing, of course. I told him I certainly understood that, and I knew it was a gamble, but I, I would ah, I would like to travel with it because ah I would, I am, was, and still am in dire need of supplemental income to supplement my judicial salary. I've got a daughter in college, and ah we've got four children at home now, ranging from seven to eighteen.

W: I know how difficult that is. Ah-

N: And that's, that's the reason.

W: Say, is it fair to say that you were relying on his recommendations?

N: Yes.

W: And the transaction turned out well, obviously.

N: That's right.

W: Our records reflect that the one, the note, the ninety-five hundred dollar note- It was not paid back until, or payments did not begin- I, it's all paid back now, is it?

N: Yes.

W: Did not, did not begin until eighty-two. Now the note, of course, is dated February, eighty, and we get back to this backdating business. Maybe, does that trigger some-

N: No, I, I don't recall.

W: When you met with FAIRCHILD, ah, did he make any representations about the well?

N: He didn't, nothing, not much of a-assurance at all. He thought they might be good. He thought they were, but he explained to me that it was a gamble, and I knew that already, of course.

W: Well the, I think the records will reflect that the note did not begin to be paid back until after royalties started coming in in eighty-two.

N: Right.

W: Was that part of the deal, that you would not have to pay back money until the oil wells started producing for you personally?

N: I don't, I wouldn't think so, no.

W: I mean, was it an arms-length transaction between you and FAIRCHILD?

N: Far as I know it was. Far as I'm concerned, it certainly was.

W: Did he have anything on his mind that he wanted with you-

N: You'd have to ask him because he's never asked-

W: I mean, did-

N: Anything that or demanded anything. Of course, anything to do with his son's case absolutely had nothing whatsoever, 'cause I don't, I'm not even aware of really what that's about. I think I read something in the paper one time about it since then.

W: Did you-

N: But if you can-

W: Detect anything-

N: If you can detect or know of anything at all where I ever had any connection with his son's case or the disposition of it or handling of it or anything to do with it, I sure wish you'd tell me, and I'll-

W: I, well, I-

N: Because there has-

W: I can assure you, we have no information to that effect-

N: There has, because there has been nothing.

W: No, I, I guess what I'm asking you is whether or not you detected anything untoward from either-

N: Abso-

W: Mr. FAIRCHILD-

N: Absolutely not. If I had, I'da pulled back immediately and wouldn't have had a darn thing to do with it.

W: Did you know at the time- Well, I guess INGRAM represents FAIRCHILD in certain matters?

N: I think so. They may be kin, but they're very close, and I mean he represents him, I know, and-

W: Did he represent his son at all in, in, in this or any other procedure that you know about?

N: I, I have, not, not to my- I have no idea. If I answer that one way or the other, I wouldn't be telling the truth because I don't know. I've never heard him mention it.

W: Could you give us just a rough figure as to the total amount of money you received from these wells?

N: No, but it's of record. It's all by check.

W: I mean, obviously, we can find it-

N: Sure, sure-

W: I just thought, thought you'd know-

N: I wish I could. If I had ah-

W: Sure-

N: The records here or tell you where they are.

W: Just so I can make sure I know- What, one-

N: All right-

W: I guess there's a Union oil well in what county would that be, KEN?

WS: Union oil well-

W: One in Covington County, and there's on in Mobile County, Alabama, and there was one in ah-

WS: Marion County-

N: Marion County-

W: All right, that would be the GETTY-

N: I think Covington was the buster, the bumber-

W: Okay, which, of the EXXON or the GETTY, the Marion County or the MOBIL well, which is Mobile, which was the better one?

N: They were both good, and they were comparable to begin with, and one's a little better than the other now. I think-

W: And which one of them-

N: I think it's Mobile now, but I'm not positive. I know they were-

W: But they're on the decline.

N: Well they, they've declined from the initial income, about ah half or less, much to my chagrin I'll say.

W: Sure. Do you recall, thanks- If you recall Judge TAMM's ah communication with you asking for specificity on the FAIRCHILD wells?

N: I remember some ah, ah in- Well, almost every year we get something back that-

W: Do you fill these out yourself, or do you have someone fill them out for you?

N: I had my CPA, CHARLES LOGAN, do them.

W: And I guess he supervised it, and you provided him with the info, and you check it?

N: Well, if the info was available, and, as I say I'm a poor businessman, and I don't take care of my own business as, as I should. I've been, I don't know why, but I, I guess it's because of the pressing duties of the office, really. It, it's, it's ah, it's surprising to a lot of people, but ah that's the way is-

W: That's a lawyer, that's a lawyer who's very familiar with the federal system, believe me.

I guess the obvious question that I have is did that communication with Judge TAMM and the requirement that you specify the wells more particularly than you had before trigger anything in you mind that would help with this question about the possible backdating?

N: (Unintelligible)

W: Do you recall ah-

N: I certainly would have never tried to ah hide anything. Everything I know of is of record.

W: I mean, frankly, Judge, the situation we have is this. The, the notes are dated February, eighty-

N: Uh-huh-

W: The deeds are noted February, eighty. By the objective evidence, including your financial disclosure statements, it appears that you didn't get involved in this until a year later, and it appears it took some time after that until you, you began receiving monies and until you paid back the notes.

N: Unless the wrong date was on 'em, I don't know. I really don't.

W: Who would have handled the papers. Who, would you have done it yourself, or would CARROLL INGRAM have done it or somebody else?

N: I think CARROLL handled the thing for me, the best of my recollection.

W: Just to-

N: But I wasn't in it with CARROLL. I just invested, invested-

W: Does he have oil and gas interests with Mr. FAIRCHILD?

N: I don't know for sure. I would assume it, but I don't know.

W: Would he have been the one who suggested to you that FAIRCHILD is a successful man and-

N: Certainly, right, and I knew of FAIRCHILD, but I didn't, I never did know he was in the oil business. I always thought he was in the contracting business only. And I, as I say, I think I had possibly met him before, but I didn't ah-

W: Do you recall, as you sit here, how many sit-downs you would have had with him concerning these specific leases?

N: No, I don't-

W: Would it, would-

N: It was more than one-

W: There have been more than one?

N: Yes.

W: Would they have taken place here or-

N: No, always at his office.

W: And would CARROLL INGRAM, on all occasions, have accompanied you?

N: I think CARROLL did one time. I think so.

W: But there were occasions when you sat down with the man, yourself, and discussed this?

N: Yes, uh-huh.

W: And was any other pos-

N: To the best of my recollections, I-

W: Was there any other possible business that you discussed with him other than these three wells? I mean, would-

N: Not to my knowledge. I certainly never discussed anything about his son's case.

W: All right, I mean legitimate business-

N: Not to my-

W: Investing somewhere else-

N: Ah, at one time he said he had another well that might be real good if I was interested in investing, and he'd be in touch with me, but he never has- It had to do with some- I forget what they call it. Had school in the name, school land profits- Something, some, something to do (unintelligible), but ah he never did ah get in touch with me on that.

W: Have you sought him out to get back involved in business?

N: Not to my recollection. I've talked to him very sporadically on the telephone, but ah-

W: Would it be in connection with your wells?

N: Yes, mainly, I wondered why the production had dropped, of course, the income had dropped, that is, but specifically what the situation was and what it looked like in the future-

W: All right-

N: With respect to the-

W: As best you can, when was the last time you spoke with him-

N: Oh, several months ago-

W: With Mr. FAIRCHILD.

N: Yeah.

W: As you sit here, do you have a recollection why ah the note would be dated February, eighty, and I don't think you-

N: No, I-

W: Began paying the note back until early eighty-two?

N: No, I really don't, honestly.

W: Was the payback prompted by FAIRCHILD in any way?

N: Well I, how do you mean, was it prompted-

W: Called up and said ah this note's outstanding. I want you to start paying back interest or some, something like that?

N: I don't recall. I don't recall whether it was. But ah-

W: Frankly ah-

N: I neglect my- I'm getting back on it. It sounds like a broken record- When I neglect my business so badly, my financial business, believe me.

W: Sure. Ah, frankly, ah BUD HOLMES' name has come up in this. Ah he was the DA who eventually received and took over-

N: Uh-huh-

W: The FAIRCHILD son's case, and ah what's your relationship with him?

N: Very good friend of mine.

W: Ah, business-

N: From way back. I remember the first time I met BUD. I was trying a, a civil damage suit in Harrison County Court, and the reason I remember it is he told a lot of people about it, and I was very successful (unintelligible), and he came in there as the, the jury was out or just about to go out. He came- I think I had a pretty good reputation representing a poor man, and ah he came in there, and he had a little case that he was trying to get settled. I think ah, I think RAY BRYANT was defending (unintelligible) one of the two, and they, BUD was telling me about him. He introduced himself and said that ah he didn't ah, ah they wouldn't pay him near what it was worth, and so I told him, well BUD, just go tell 'em ah I'm gonna help you with the case, and he did, and he got it settled, and he tried to give me part of the fee, and I wouldn't take it, and he said, he said-

W: That, that's the lawyer with a good reputation.

N: Didn't, didn't, didn't know how much that he really appreciated that when he needed it so badly. From then on we've been very good friends, and I forgot about the incident until he told about it a few years ago, frankly.

W: Do you have any business relationships with him?

N: With BUD? No.

W: You're just good personal friends?

N: Uh-huh.

W: Ah, has he ever discussed cases with you while he was DA?

N: What kind of cases?

W: His cases, the criminal cases in his court.

N: I think a few murder cases we discussed.

W: Now, the obvious question, Judge, did he ever discuss the DREW FAIRCHILD drug case with you?

N: Not to my recollection. I think I would recall it-

W: Okay.

N: If he had.

W: Sitting here now, and I know it's a long time ago-

N: Uh-huh-

W: I tell you that ah, the airport bust was August, 1980. Ah, that, I tell you that originally the case was a federal case, got passed to HOLMES.

N: How did it get passed, what, what happened?

W: Well-

N: I don't know anything about it-

W: Frankly, that's-

N: I'm, I'm, interested. I'm curious-

W: Frankly, that's a very good question, and it's quite a ah, what we're looking at here. Ah, I think it's fair to say that with the present administration there's a strong policy toward the federal government sharing its cases with local prosecutors, spread the wealth around so that-

N: I see-

W: The federal prosecutors get interested-

N: I see-

W: And I know that the present U. S. Attorney has a strong predilection in that direction. Now it could very well be ah that ah HOLMES wanted the case for purely legitimate reasons. And certainly (unintelligible)-

N: Was it passed while he was district attorney?

W: Yes, and he received the case, and ah I tell you again to this day, it has not been resolved. Ah, do you have any recollection of discussing that particular case with BUD HOLMES?

N: No.

W: As you sit here, do you have any notion as to who represented ah FAIRCHILD's son?

N: No. I don't know, much less any recollection.

W: Okay.
N: I don't know to this day, and I don't think I've ever known.

W: All right, let me tell you that of record, and I don't know what this means, but of record is an attorney named PORTER who I think was killed a short time ago-

N: BOB PORTER-

W: BILL PORTER?

N: BILL PORTER, right, I'm sorry, yeah, yeah.

W: Ah, this same series of questions- Did you know Mr. PORTER?

N: Yes.

W: He was, he was a practicing attorney in Hattiesburg.

N: Uh-huh-

W: And-

N: I didn't know him well. He just sat in my courtroom, or, or my chambers. I don't think he ever tried a case before me. I didn't know him very well.

W: So you knew him like you know every other attorney in Mississippi-

N: Correct, or even less ah, ah, ah- I'm, I didn't know him nearly as well as I do some attorneys.

W: And, obvious questions, Judge, did BILL PORTER ever come to you and discuss DREW FAIRCHILD?

N: Definitely not, absolutely not-

W: All right, and did the U. S. Attorney ah ever discuss the ah FAIRCHILD case with you?

N: Absolutely not.

W: I have to get a little (unintelligible)-

N: I understand, but I-

W: So (unintelligible)-

N: You know-

W: From the time of that bust until ba-basically me talking to you about the case-

N: Uh-huh-

W: You've had no connection, no knowledge of it, no participation in-

N: Correct-

W: The DREW FAIRCHILD case?

N: Absolutely, except something I read in the paper. It was either an editorial or state, or, or news article or something, a few years ago, I think-

W: To what effect-

N: About this case. I don't know. It was critical of the way it was handled or something.

W: Critical of the ah prosecutors?

N: Of, of, of- I, I, it was critical of the manner in which it was handled, something about ah it should be handled differently or he should be prosecuted, something should be done or he was being favored, or something to that effect. It was critical of the way in which it was handled, I believe. I, I'm pretty sure that I read that in, maybe in a Hattiesburg paper while I was holding court up there. It could have been the Jackson paper. I (unintelligible)-

W: Do you have the clue if the criticism was directed to the feds or to the locals?

N: To the best of my recollection, I think it was ah, ah, I think it was directed to the locals, to the, to, 'cause I never did know it was a federal case. I didn't know it had ever been in the federal system.

W: Do you recall any knowledge of the case, meaning the FAIRCHILD case, while you were dealing with WILEY FAIRCHILD?

N: No.

W: And he certainly never brought it up?

N: Not to my recollection. I think I would recall that.

W: When you saw the article, did you put two and two together and realize that it was WILEY's son?

N: Yes, I think it stated it-

W: Even mentioned it?

N: Yes.

W: Is WILEY a prominent-

N: But I didn't remember the name. Even when you mentioned the name, whatever, what you say-

W: I think his real name is REDDITT-

N: I don't know-

W: And I think the people refer to him as DREW.

N: When you said the REDDITT FAIRCHILD, I didn't know what in the world you were talking about or who.

W: I think they call him that, and I think-

N: And I, I don't know him by any name. I don't know him, never met him, don't knew what he looks like-

W: Never met him?

N: No.

W: Never saw him?

N: No.

W: Does he work with his father?

N: I have no idea. Didn't even know he existed, except from what I read about that and what you just told me. Absolutely no.

W: Okay.

(End of Side 1 of tape)

N: I think maybe payments were delayed or something and, and so I think the division orders- I asked why.
I think I complained or, or asked about it. I think that's why the division order, so I get my check directly.

W: I think-

N: I should have been getting it-

W: I mean-

N: As a (unintelligible)- I wasn't familiar with the manner in which these things were done.

W: Let me help you as much as I can on that-

N: All right-

W: To, to my knowledge there was some communication between the FAIRCHILD and the oil companies as to whether or not you would receive your check from him or from them-

N: Uh-huh-

W: I think that took place in 1982.

N: Uh-huh-

W: In addition, I think with some of CARTER's ah tax changes, there was a question about how much would be going to shareholders.

N: I see.

W: And I think this took place in eighty-two and eighty-three, and it doesn't clear up the question, why, if you received your interest in February, eighty-one, as reported in your financial disclosure statement, the deed and the note would be backdated.

N: I don't know, unless there was some error.

W: Do you have any suggestions as to where we should go? I mean it's our earnest desire to clear this up-

N: No-

W: Just as expeditiously as possible.

N: I can't recall anything about that, really.

W: Do you, I mean, is **CARROLL INGRAM** the, the meticulous kind of lawyer who might remember this?

N: I don't know. I don't know.

W: Do you have documents somewhere? I mean, I, I suppose if ah- When you put down February, 1981, on the financial disclosure statement, obviously, you were looking at a document that reflected that date-

N: Well, my CPA did that. I don't like to set blame like so many people do on my CPA, but that, that's the truth.

W: Okay. Well, then surely he couldn't have pulled the date out of the air. He was taking a document that reflected February, eighty-one. My guess is-

N: Well, unless the, unless I started receiving the income then.

W: No, you didn't receive income until even a year after that.

N: Let's see-

W: I get, my point is-

N: I don't know where **CHARLES** got it from. He must have had a reason (unintelligible). I don't know. Again-

W: I mean, I guess what I'm, what might have happened is that your documents accurately reflect the February, eighty-one time when you actually got the interest, and others may have backdated this for their own reasons.

N: I don't know. I'm- I really don't know.

W: Perhaps ah, if, if- I guess your, your papers are with a banker friend?

N: Yes. I don't think I'd have anything different than any more than what you have except check copies ahd-

W: I guess my thinking is that if the dates on your documents are different than the dates on the documents that we have. That might help explain who would be responsible for this.

N: I don't know. I'll check and see. I'll let you know if they are.

W: Okay, perhaps I ah, I'm gonna go back to Washington, but perhaps KEN can-

N: Okay. I, I'll get those back, and it'll take me a few days.

W: I mean, I, our earnest desire is to wrap this end of it-

N: I understand-

W: Completely, and often times judges are victimized by others-

N: Yeah. Well, I don't-

W: I mean, you're a savvy guy. You know that this happens.

N: Well, I don't know about that part of it, but all I know is ah nothing was done or nothing was ever mentioned about WILEY FAIRCHILD's son, and I defy anybody to, and I say defy, I don't mean (unintelligible), but I challenge anybody to show any connection or anything I've ever done in connection with WILEY FAIRCHILD's son's case I certainly would (unintelligible) to begin with. And if I even suspected something like that was going on, I certainly wouldn't have ah invested or have any dealings, absolutely.

W: Is there anything else about the transaction ah that just, on the top of your head, you could think of that may help us in this?

N: No, but why, why, how would my name come up, and how did it come up? That's, I think that's a fair question, that I had any kind of connection with WILEY FAIRCHILD's son's case?

W: Well, I, I, I knew as an intelligent, curious judge, you were gonna-

N: Sure-

W: Ask me that. Judge, it's a confidential informant. I mean, obviously, I mean, you've been in the system long enough to know that the FBI is duty bound not to reveal that kind of information. I can only tell you we receive these allegations all the time, and you know, we can't-

N: Well what's the allegation?

W: The allegation is that the FAIRCHILD case was mishandled, number one, and in the course-

N: By whom?

W: Well, that's loose, frankly, and, and we're obliged by the information to look at it from top to bottom, from the bust in August, 1980, until today. And that's, generally speaking, the allegation, and in the course of receiving the information, it was alleged as well that there was a, a, a transfer of property, an imbalance transfer of property to you from WILEY FAIRCHILD. That's the sum and substance of it.

N: Well (unintelligible) imbalance-

W: Imbalance in the sense that you turn- ninety-five hundred dollars from you to him and considerable more in the form of the royalty payments from him-

N: Well, I hope so. If it's a good investment, if you just get your money back, it's not a very good investment. Of course, a lot of people don't get their money back even, but ah I had assumed that when I invested I would make some money or I wouldn't have done it.

W: Sure. In the course of your dealings with Mr. FAIRCHILD-

N: I knew it was a gamble-

W: In the course of your dealings with Mr. FAIRCHILD, was there ever- Did, did you detect anything that caused you any ah concern?

N: Of what kind?

W: Ah, that, fair business practices or that perhaps in his mind he had an intention that didn't match yours in this business transaction?

N: No, if I had I, I wouldn't have invested with him.

W: And to this day and-

N: (Unintelligible)

W: In the course of your dealings it's, it's always been, your answer has always been the same?

N: Sure.

W: KEN.

WS: I, I had a question-

N: All right, sir.

WS: Going back- It, it may have been covered, really. When you first met with ah CARROLL and discussed anything, did he contact you first, or he (unintelligible)?

N: No, no.

WS: You went to him?

N: Yeah, I asked CARROLL one time. Ah, I, I said CARROLL if you run across any good investment of any kind- I didn't say oil and gas or anything-

WS: Uh-huh-

N: That you think may pan out, and I knew CARROLL was pretty good, I thought, businessman, from what I understood, and I knew he invested in properties and what have you. I said if there's room for investment, I said I want it to be above board and all (unintelligible). If you think that there's something there that I can make some money out of, income, either by investing in a piece of property and selling it later or any kind of income, any, any kind of investment. I may have mentioned oil and gas, among other things. I don't know. I said ah I wish you'd let me know because I'd be most interested in, in, in trying to invest in something where I could make a little money. It's- No, he didn't approach me at all, definitely not.

W: Judge, here's one thing I wanted to ask you about. On your eighty-three financial disclosure statement, the FAIRCHILD CONSTRUCTION COMPANY, LIMITED, interests are represented. The value is listed five to fifteen- I guess the value meaning how much you spent for it. Would that be what that reflects? You know what I mean here? Maybe I can show you. Okay here's the, the FAIRCHILD CONSTRUCTION LIMITED, and I guess this is the second one. That's not the very good- That's the one that's ah less than a thousand dollars.

N: My CPA filled this out for me. I don't know. He was a good CPA. I had a lot of faith in him, and ah frankly, I've never, you know, just didn't know how you were supposed to evaluate the-

W: Okay, well-

N: Something of that kind-

W: Do-

N: I can understand property, how you would evaluate that, piece of real estate or something like that, or stock that you might own-

W: Sure-

N: But ah I don't know still, frankly, how you would evaluate an oil and gas interest.

W: Well that, obviously that was my question-

N: Yeah-

W: And my guess was when you put value down five to fifteen, you were referring to the purchase price, or if not the purchase price, the, the ah, the-

N: I don't know-

W: Notes that you signed-

N: I don't know what CHARLES relied on when he entered that.

W: All right, and I guess-

N: I say CHARLES, CHARLES LOGAN, my CPA.

W: Obviously the, the question that was raised is the income is indicated between fifteen and fifty, and the value is between five and fifteen. It struck me how could that possibly be?

N: I don't know, frankly. I hate to be so dumb, but ah I don't know.

W: Ah, I know that you were not prepared for this interview, and I know we're asking you about events-

N: (Unintelligible)

W: That took place a while ago. Is there anything else that you know about this that should know-

N: Not that I can think of offhand because, you know, some time ago. Ah, I still would like to know exactly what it is alleged that I'm supposed to have done or not done in connection with this ah-

W: Well, frankly, we have no information that you-

N: You know-

W: That the case was in your court, that you did anything wrong with it- What we have-

N: That's, that's what puzzles me. How-

WS: It was in Judge COX's court.

N: I see. Maybe Judge, maybe you oughta ask Judge COX (unintelligible)-

W: Well, he was never indicted. No, not Judge COX, believe me, Judge COX was never indicted. You would have heard about that.

N: (Laughter) No, but ah-

W: The other defendants in the ah, that were busted at the airport were assigned to Judge COX. They pled guilty. They were sent to prison. DREW FAIRCHILD was never indicted. His case got picked up by HOLMES, as I explained.

N: Why was it-Do you have any idea?

W: Well, that-

N: Was it presented?

W: No, it was not presented.

WS: There was a, he reached a ah memorandum of understanding with the U. S. Attorney. (unintelligible) So far as to arrive at that-

N: Uh-huh-

WS: And, along with his attorney, BILL PORTER, that was on November 19th, 1980-

N: Uh-huh-

WS: And the next significant thing that happened is he's indicted by a Forrest County Grand Jury in August of 1981. Some time between November of 1980 and August of 1981, that case, on DREW FAIRCHILD and another defendant who was a fugitive, was passed down to BUD HOLMES for handling.

W: Believe me. At this point we're not suggesting that there was impropriety in the U. S. Attorney's office or that there was impropriety by Mr. HOLMES. I mean, we have an allegation, and always in these cases are fervent hopes that there's a logical, reasonable, legitimate explanation for all of these events. And, and we're at the inception of it, and one of the reasons we came to you is because we're not gonna be scurrying around your neighborhood and not tell you about it-

N: Right. Well I'm puzzled. I, I just don't know anything about it. I, I'm, I'm, I'm learning something about it now.

W: Okay, so I'm- Just to complete the picture-

N: That's what I was, that's what I wanted to ask you, what allegation- I've never heard, you know, never had the case, never heard about the case except what I told you, and ah certainly had nothing to do with it.

W: Sure. To complete the picture-

N: I don't think I could have influenced Judge COX. Do you? (Laughter) I don't think. Think maybe Mrs. COX, maybe, maybe.

W: Just maybe.

N: Maybe-

W: Well anyway-

N: And certainly, but, but, but seriously, I, I, it's, you know, it's just ludicrous to say I've had anything to do with this thing.

W: Well, Judge COX never had DREW's case, just so we're clear on that. The case was never indicted. He had all the co-defendants.

N: Oh, he never was indicted?

W: He was never indicted federally.

N: That's what I'm talking about.

W: When the case got transferred to the DA's office in Hattiesburg, he was indicted-

N: Well, it was never presented to the Federal Grand Jury.

W: Right-

N: Well, that's what I asked awhile ago-

W: Right-

N: Was it ever presented. I meant the federal grand jury-

W: No-

N: Obviously you said he was indicted in the state-

W: Yes, right. It was never presented federally-

N: I see.

W: And he pled guilty in January, eighty-two-

N: Uh-huh-

W: In December, eighty-two, eleven months later, the case was passed to the files, ah it's returned the file, from files to the active list, and he's never been sentenced. And of course now it's April, eighty-four.

N: Uh-huh-

W: You don't have to be a genius or a, a particularly sophisticated FBI Agent to wanna know why a case from August, eighty, has never been resolved to this day ah when the evidence appears to be extremely strong. That's the focus of the allegation. In addition, we received information from the same source that ah- I don't wanna use the word sweetheart, but the word imbalanced financial relationship developed between this Mr. FAIRCHILD, DREW's father, and you, the chief judge of the district-

N: Uh-huh-

W: So here we are. Okay-

N: I don't know what influence the chief federal, dis-U. S. District Judge could have with this case. When, when-

W: Well, he-

N: When was, when was it transferred to the state? I mean when was it presented to the state or when was he indicted?

W: August, eighty-one-

WS: Eighty-one-

N: August of eighty-one?

W: Right.

N: And it was in the federal system when, originally, when did-

W: August, eighty-

WS: August of eighty.

N: Okay.

WS: It was still in the federal system on November 19th, 1980, and it was some point after that it was transferred down to-

N: How was it transferred? I don't understand-

W: Well, that's- Transferred- And this, I, I, I'm hopeful, and there's a reasonable expectation that the answer is simply that ah the U. S. Attorney and U. S. Attorneys elsewhere in the present administration-

N: Uh-huh-

W: Welcome the opportunity to share their cases-

N: Well, I understand-

W: And that may well have happened here-

N: Uh-huh-

W: And we're gonna pursue it if, if we possibly can. Judge, the backdating- I mean, I'm sure as an intelligent man, you can perceive the importance now. If you entered into a business relationship with FAIRCHILD in February of eighty, as the deeds and the note reflect, that took place before the bust.

N: Uh-huh.

W: If you took, entered into the relationship in eighty-one, it took place after the bust. People can draw any conclusions they want from that, but that's the chronology. That's why we have to get to the bottom of when things occurred.

N: I understand, but regardless, what connection have I had with ah FAIRCHILD's son's case? Isn't that the bottom line?

W: It, it basically-

N: I mean-

W: Could well be the bottom line.

N: Yeah, what, what-

W: And that's why-

N: Could I have conceivably done?

W: Well, that's why I had to ask you-

N: To influence the case? Ah, I certainly didn't do a thing in the world. I don't know a thing about- But what could I have done?

W: Well, I mean, I don't know what you could have done. I mean it-

N: As United States District Judge.

W: If someone wanted to use their imagination, I suppose they, they could think of things, and, and I, that's why we ask you the question did BUD HOLMES ever talk to you about the case?

N: Oh, no.

W: The answer is no. Did CARROLL INGRAM ever ask you about the case. The answer is no.

N: Right.

W: And did ah WILEY FAIRCHILD ever ask you to do anything.

N: No.

W: The answer is no. I, I think it's still a healthy procedure to get to the bottom of this document business, and if you would be kind enough to do it-

N: If I have, find anything that would be any different from this, February of eighty-

W: Right-

N: I'll call you.

W: And, and my guess is, my- Judge, I, I think my guess is if your accountant is looking at documents, and he puts down on your financial disclosure statement that you purchased this in February of eighty-one. It's reflected on a document, and it could be, unbeknownst to you, that backdating is going on.

N: Why?

W: To reflect a transaction that took place before, before the bust, before the drug bust. In some people's mind-

N: But what-

W: That may be important.

N: I don't know why-

W: Well-

N: To who?

W: I don't know either-

N: For what reason-

W: And at this point, all we would be doing is speculating, without evidence to support it-

N: Yeah-

W: So it's probably not a healthy thing to do, but I mean, I, I, I think-

N: Okay-

W: At this point we should-

N: I'm just puzzled, ah, to say the least.

W: Well, we're puzzled too.

N: Yeah.

W: Okay. Well, okay, then. Then here, here's the way we'll resolve it. If, if there are documents-

N: I, I'm just wantin' to know what, what's a, what's alleged that I had to do with this case at all. I mean, what, what-

W: Well, I tell you this. We have no information from any source that in any untoward way you effected the disposition of the case. I mean, that says it all, doesn't it?

N: Yes. I hope so because it's the truth, but, you know, that, that's what puzzles me. What, what allegation could have been made? Ah, that's, that's why I asked you. This is something, you know, just completely shocking to me.

W: Sure. Well let, let, let's resolve it this way. If ah, if there are documents out there to helps us, and you can provide them, that would be great.

N: I understand. Well, I'll be happy to if I've got any.

W: If there's a resolution of this that ah I can share with you, you'll be the first to know, the way I came to you, as soon as I possibly can.

N: Okay.

W: Okay.

N: Fine. But I'd like to know myself.

WS: (Unintelligible)

W: I'm sure you're very curious about it. I'm sure this, and it's-

N: Most certainly-

W: I can certainly understand that.
And, obviously, we'll provide you
a copy of this-

N: Okay.

W: Put it on, in the drawer and hopefully
not have to refer to, but just so that you
have it.

N: Okay.

W: Okay?

N: All right.

W: Thank you for your time, sir.

N: You're welcome. Enjoy Biloxi.

WS: Nice seeing you, judge.

N: Okay, good seeing you, yeah.

WS: The time is 4:42. The interview is
terminated.

END OF TAPE

COMMITTEE EXHIBIT NO. 23

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

SPECIAL GRAND JURY IMPANELED JULY 18, 1984

# TESTIMONY OF JUDGE WALTER L. NIXON, JR.

Wednesday, July 18, 1984

Hattiesburg, Mississippi

(A QUORUM PRESENT)

APPEARANCES:

ROBERT I. RICHTER
REID WEINGARTREN
U.S. Department of Justice
Public Integrity Section
Washington, D.C.
REPRESENTING THE UNITED STATES

FOREMAN: DAVID MITCHELL WARD, SR.

DEPUTY FOREMAN: DOROTHY MAE CLAYTON

REPORTED BY:
DALE N. MILFORD,
Certified Shorthand Reporter,
Registered Professional Reporter,
Court Reporter For Special Grand Jury
Order Dated February 21, 1984

MR. RICHTER:

We're in session, and the judge will be in any second.

(WITNESS ENTERS ROOM)

THE FOREMAN:

Do you solomenly swear that the testimony you're about to give in the cause pending before this grand jury will be the truth, the whole truth and nothing but the truth, so help you God.

THE WITNESS:

I do. Ladies and gentlemen (nods to grand jury).

JUDGE WALTER L. NIXON, JR.,

having been first duly sworn, was examined and testified, as follows:

EXAMINATION

BY MR. WEINGARTEN:

Q. Your name, sir? Your name?

A. Walter L. Nixon, Junior.

Q. And how are you employed?

A. I'm a United States district judge for the Southern District of Mississippi.

Q. And where do you sit, Judge?

A. I didn't understand you.

Q. Where do you sit?

A. I sit in Hattiesburg, Vicksburg, Jackson, Meridian and Biloxi, sometimes in Natchez.

Q. How long have you been a federal judge?

A. Sixteen years next week.

Q. And who appointed you?

A. I was nominated and appointed by President Lyndon Johnson in 1968 on recommendation of Senator Eastland.

Q. And you're also the chief judge of the Southern District of Mississippi?

A. I am and I have been since September of 1982.

Q. And where are your central headquarters? Where do you generally sit? Where is your--

A. Biloxi. I was born and raised in Biloxi and we live-- my wife and children and I live in Ocean Springs which is just across the bridge from Biloxi, I'd say, approximately four miles.

Q. Judge Nixon, my name is Reid Weingarten. Seated to my left is Robert Richter. We're both attorneys for the United States Department of Justice

A. I know you and I have met before. I've never met the other gentleman.

Q. As I'm sure you're aware, the ladies and gentlemen in the courtroom at this moment are members of the federal grand jury in the Southern District of Mississippi. You have graciously volunteered to appear this afternoon and give testimony in this investigation. As I understand, you're presently on vacation?

A. I think so.

Q. Hopefully--

A. My family is, anyway.

Q. Hopefully, we'll-- well, certainly we'll be finished this afternoon and you can get on your way. Appreciate your coming.

A. I appreciate that.

Q. Judge Nixon, I am absolutely convinced that you understand completely a witness' constitutional rights, but by regulation I'm required to advise you that you have the right to an attorney, your attorney can't be in the grand jury with you but that at anytime during the proceedings if you wish to consult with an attorney, you're free to do so. Anything a witness says in the grand jury can be used against that witness in subsequent proceedings. And of course you understand that any-- that you have the right not to answer any question the answer to which might tend to incriminate you.

You understand all those rights?

A. I do.

Q. Thank you, sir.

A. You're welcome.

Q. Judge, do you know a man named Wiley Fairchild?

A. Yes, I do.

Q. And how do you know him, sir?

A. I knew him by reputation. I don't think I ever met him, possibly had casually, prior to, I'd say, the early part of 1980. And about that time, I'd say, the very early part of '80 or possibly even as late as late '79, to the best of my recollection-- it's been years ago, of course-- I met him formally.

Q. What were the circumstances of the meeting?

A. Some good while before that, I had talked to my friend, Carroll Ingram, who is an attorney and a very reputable attorney in Hattiesburg, Mississippi, and in the course of conversation-- Carroll has been very successful in business also. And I asked Carroll if the occasion ever arose where he was going to invest in anything, and I think I mentioned oil and gas and real estate or any other comparable transaction, or if he knew of one that he was not going to invest in that looked promising, that I would appreciate his letting me know because I would like the opportunity to invest. Because I've got four daughters at home and at that time they ranged in ages from three to, I think, 14 years, and I would like-- wanted to try to supplement my income if possible by making investments to try to increase my income because I knew I had to put them through college when and if they wanted to go.

Q. All right.

A. And sometime later-- that was I think in '79, 1979, best of my recollection. And I tried to reconstruct a lot of this since you and I talked in April of this year. At that time you came into my office and talked to me and I gave you an appointment.

I had no information in advance about what you wanted to talk about and I tried, to the best of my ability, to answer your questions concerning what had transpired years before. And I have tried very hard to reconstruct, since that time, what has occurred with reference to the transactions you asked me about, and I'm sure you'll ask me about today, and I'm here to answer these to the best of my recollection.

Q. Okay. Did Carroll Ingram get back to you?

A. Carroll got back to me sometime later. I think it was probably in the latter part of 1979 or sometime the very first part of 1980, to the best of my recollection, and said that he had a client and very good friend, Wiley Fairchild, who had investments and had been very successful in oil and gas, investments that is.

Q. Had you heard of Wiley Fairchild at that time?

A. I'd heard of him, yes. I had heard-- I thought he was in the construction business, road and bridge building, which was the only thing I knew about him at the time, and I had heard nothing of course derogatory about him. I heard he was a very successful and wealthy businessman.

Q. Isn't it--

A. In Hattiesburg.

Q. Here's an important question to ask you. When you approached Carroll Ingram at first, did you mention Wiley Fairchild or did he come back and mention Wiley Fairchild?

A. He came back.

Q. Are you certain of that?

A. Yes, I'm positive. I knew nothing of Wiley Fairchild's connection with Carroll Ingram, to the best my recollection, at that time.

Q. Okay.

A. Except I assumed that they knew each other well because they were both in Hattiesburg.

Q. But you're certain that you didn't go to Carroll and say, "I know that you know Wiley Fairchild and I would like to invest with him"?

A. To the best of my recollection, I wouldn't have said that. I would have no reason to so therefore I--

Q. Okay.

A. -- I don't recall anything like that.

Q. What followed? What happened?

A. Carroll got in touch with me, and as I told you, he told me about Wiley Fairchild and said that he had talked to Wiley Fairchild and

Wiley Fairchild was willing to talk to me about some investments in oil and gas, that he was very successful in that field, and that Carroll would set up an appointment if I was interested.

Q. What did you do?

A. I asked to him do so.

Q. Okay. And what followed?

A. Carroll, I think, made an appointment for me to see Mr. Fairchild at his office in Hattiesburg, Fairchild's office, and I think Carroll met us there, and we talked a while. I don't know whether Carroll stayed or left, but Mr. Fairchild told me that he had known Carroll for many years. I think Carroll represented him. I think, if I recall correctly, he told me he helped put Carroll through law school. And he asked me why I was interested in investing and why I wanted supplemental income. And I told him about my four little girls at home and that that was the reason. He told me that, of course, he said, "You know it's a gamble, oil and gas is a gamble." And I told him-- and there was no assurance whatsoever of course that anything would pay off.

Q. Judge--

A. Chances are they wouldn't, but I told him I understood that. But Carroll had vouched for him and told me he was very knowledgeable and I was willing to invest and take that chance of a successful investment.

Q. With your best efforts to date that meeting, what did you come up with?

A. To the best of my recollection it was the very first part-- either the latter part of '79 or probably the very first part of 1980.

Q. Is there any document that you dug out that helps us?

A. No, there's not. That's just the best I can reconstruct it and I have no documents. I didn't make any memorandum of anything like that.

Q. Do you keep a calendar?

A. No. On whom I talk to about things?

Q. Visiting--

A. No.

Q. -- visiting Wiley Fairchild, would that be--

A. Oh, no.

Q. All told, how many times did you visit Fairchild's office in connection with this?

A. I don't recall. It was more than once, a few times, and--

Q. · Was the deal struck that day?

A. To the best of my recollection, it was, because I think Carroll had told me and then Mr. Fairchild confirmed it, that if I wanted to invest in three wells that he had an interest in, that it would cost me, I think he said, somewhere around nine or ten thousand dollars to the best of my recollection.

Q. Did he say it at that first meeting in early '80 or late 1979?

A. I didn't understand you.

Q. Were the figures set in that first meeting, late '79 or early '80?

A. I think so. They were mentioned somewhere along the line during our conversations. Whether it was that meeting or later on, I can't specifically recall.

Q. Well, do you recall leaving that meeting with the deal in your pocket?

A. I guess we had a gentleman's agreement.

Q. What was the agreement? What were the terms of the agreement?

A. That--I don't know whether it was at that meeting or one a little later, as I told you, but that investment in the three wells, it would cost approximately nine to ten thousand dollars. He might have said ninety-five hundred dollars, which eventually it was, but I'm not sure about that, and that would be the investment in the three wells.

He said they were Covington County, Mississippi, Marion County, Mississippi and Mobile County, Alabama.

Q. Did you have any-- did you make any efforts to investigate whether or not these were good investments, promising wells, or what?

A. No, I didn't, and I'll tell you why I didn't. Because I knew Carroll Ingram to be a person of the highest integrity. I had a lot of faith in his judgment and he vouched very highly for Mr. Fairchild. And everything I knew about Mr. Fairchild at the time was what I had heard. I had heard nothing unfavorable. I heard he was a very successful businessman, which was quite apparent, so it was an agreement of trust.

I have always dealt with people in that respect, people that I knew I-- otherwise I won't deal with anyone I didn't think I could trust because I expect to be trusted and I expect to trust other people. So it was on Carroll Ingram's recommendation and assurance, plus Mr. Fairchild's success, that I proceeded. Successful, that is his successful record.

Q. Okay. Judge, let me show you what has been previously marked Grand Jury Exhibit 2. I believe there are three royalty deeds. Just run through them, if you would, and see if they reflect-- if they're copies of the three wells that you have discussed.

A. I'll compare them with the copies that I brought. (Witness looking at documents) They appear to be.

Q. Do you have copies of those royalty deeds as well, sir?

A. Yes.

Q. What dates are-- what are the dates of those royalty deeds on the Grand Jury exhibits?

A. The dates on them are February the 25th, 1980.

Q. Are the dates on the copies that you have similar?

A. That's correct.

Q. And what does February 25th, 1980 represent?

A. As I have been able to reconstruct it, it apparently represents the time-- about the time that Mr. Fairchild and I reached the gentleman's agreement with respect to the conveyance and purchase of these royalty interests.

Q. Well, was that the date you went to his office and shook hands?

A. I don't know whether it was that particular day or shortly thereafter. As I said, I went a few times. But, to the best of my recollection, it was, but I'm not sure.

Q. Well, Judge, what would the other possibilities be other than the time that you visited with him and shook hands with him and agreed to--

A. I didn't understand. Excuse me?

Q. Well, what other possibilities would there be other than the time you actually visited him and consumated the deal?

A. What do you mean "other possibilties"?

Q. Well, I mean, can we say with some certainty that that's the time you met with Mr. Fairchild and cut the deal?

A. I-- it's been years ago, Mr. Weingarten, and I don't want to say anything positively that's not true. I can just try to reconstruct and give you the best of my recollection. My memory is not that good to reach back four years ago and come up with the exact time or the exact instance.

Q. All right. If-- if-- if we're trying to ascertain what February 25th, 1980 represents, what possibility, other than a meeting, would there be?

A. Well, as I say, the best I can reconstruct it is that's the time we reached the agreement, the oral agreement, with respect to these matters.

Q. When did those royalty deeds come into your possession?

A. The best I can recall, they came into my possession in the first part of 1981, these actual instruments.

Q. What would have caused the delay?

A. I didn't understand you.

Q. What would have caused the delay?

A. Well, the delay in what?

Q. Well, what happened after you cut the deal in February 1980?

A. Well, this is the first time any instruments were delivered to me confirming that deal, any written instruments.

Q. I suppose by the deal you obligated yourself to pay money to Wiley Fairchild?

A. Well, I-- I agreed to it. Of course, under Mississippi law, until something is put in writing with respect to the conveyance of land, until it's in writing, it's not legally binding on any party. But I considered it a gentleman's agreement back in the early part of 1980, but there was no formalization of the agreement or legalization or finality until the written instruments were actually delivered to me.

Q. And when would that have been?

A. The first part of 1981, sometime in 1981.

Q. How are you able to tell that? How do you know that?

A. I know it for several reasons. First of all, I know when I made the payments that I was supposed to make. And I have the canceled checks here--

Q. When?

A. -- to show and-- and-- let me finish, please. Is it all right?

Q. Sure.

A. I don't want to interrupt you or be

rude to you.

Q. Sure.

A. And also these deeds were set for recordation in the counties in which the land was located, to be put on public records in the Chancery Clerk's Office of those counties, pursuant to my request, by Carroll Ingram. And they were sent in April of 1981 for recordation and were recorded of record in those counties. And I do know that I had asked Carroll Ingram to do that for me some few months before that time to the best of my recolleciton.

Q. Well, were they all--

A. So I think it was the first part of 1981 but I can't say what specific date.

Q. Well, then, is it your testimony that you cut the deal in early '80 and it never became effective until early '81?

A. Well, as far as I was concerned, we had a gentleman's agrement. But under Missisisppi law, until it's put in writing, a land conveyance in Mississippi, it's not binding on either party. It's not legally binding in any way and no one can enforce it. An oral promise to sell an interest in land or interst in overriding royalty interest in property needs to be in writing before it's effective under what is called the Statute of Frauds of Mississippi.

Q. What happened in the year between the gentleman's agreement and the time it became effective?

A. I was waiting to hear something. And I had called Carroll Ingram, to the best of my recollection, a couple of times about it to ask when I was going to receive the instruments from Mr. Fairchild and I was always told that he thought they would be forthcoming. And I think I even mentioned to Mr. Fairchild, once, at least, and I think-- I'm not sure about that, but I know I mentioned it to Carroll. And Carroll said that Mr. Fairchild was the kind of person you couldn't push and he'd do it in his own sweet time. So, consequently, since he was the one that was trying to put me into the deal, I wasn't going to try to push him

Q. Why did the dates reflect February '80 if it was not effective until a year later?

A. Well, you'll have to ask whoever prepared the instrument that question, because I didn't prepare those instruments. They were delivered to me already dated and already filled out and I signed the notes. The notes were dated the same date. Apparently, the best of my recollection, I mean the best guess I have is that they were done that time because that was the time that the gentleman's agreement had been entered into.

Q. But you--

A. That's not unusual for business transactions.

Q. But by that-- by that note you obligated yourself to pay interest on a deal that didn't exist for a year?

A. That's correct. And I certanly did that and I agreed to pay the ninety-five hundred dollars and I was certainly not going to quibble over interest for a year's time because I felt it was a gentleman's agreement when we entered into to it. And, actually, I thought I had paid interest on that until I just reconstructed all this after-- recently, after you and I had talked, and found out that anytime-- that when we called up, I apparently was not charged interest back to 1980. I apparently was just charged back to the date of the actual delivery of the intstruments in

19-- whenever they were actually delivered to me in 1981. I thought I had paid it from 1980.

Q. What date was the interest computed from?

A. I don't know exactly. Here's the way we would do it. When the time-- when I wanted to pay a note, pay on the notes, that is, I would have my secretary, or maybe one time my CPA, who is now deceased, Charles Logan, call Fairchild Construction. And when I wanted to pay a certain amount of money, I'd find out what the interest was to that date and pay the difference in principal. If I wanted to pay, say, fifteen hundred dollars, I'd find out what-- ask them what the interest was, to compute it for us to the date of that payment, and I would pay that, plus the principal, in that total amount of fifteen hundred dollars.

Q. Do your records reflect that you were charged interest only from February 25th, 1981?

A. To the best of my recollection. I didn't get down and compute it but I believe that that's correct. I can't be positive about it but I believe somewhere they-- I was charged interest from somewhere in 1981. But, all I know is we would call Fairchild Construction to find out the amount of interest due at that time, whenever I made a payment, and I think I made-- I think I paid each of these notes and I paid them by canceled checks which I have the originals of--

Q. Judge, did you bring those documents to the grand jury?

A. -- and-- and three different times, three different payments: two in 1982 and the final one's in 1983.

Q. And just so we're clear, can I see what you brought?

A. Yes, you may.

Q. Thank you.

A. You're welcome.

Q. Have you computed these figures to determine that it was February 25, 1981, that was the starting date?

A. No, I didn't. I didn't myself.

Q. Was that the result of somebody else's work?

A. Yes.

Q. So, Judge, it seems clear that the notes were-- well, not the notes-- notes plus the royalty deeds were in fact back dated a year?

A. I don't know that they were back dated a year. They were dated by whoever prepared them apparently to reflect the time that we had the gentleman's agreement with respect to the matter, the oral agreement.

Now, I didn't date them. I didn't have anything to do with putting the date on them. They were brought to me prepared and dated and I signed them, and I explained to you why.

Q. So February 25, 1980 represents a year before the documents were actually delivered to you?

A. Approximately, yes.

Q. Well, if you--

A. I assume they were delivered in February of '81. They were delivered sometime in the first part of '81, I don't know exactly what time.

Q. I'm just figuring from the time they computed intereest, so it must be roughly that time?

A. I don't-- somewhere in the first part of 1981.

Q. Is it possible that you did not discuss this matter with Wiley Fairchild until February '81?

A. To the best of my recollection, that's not what happened. I have--

Q. I mean, is it possible? Understanding it's a long time ago, understanding you have a lot of transactions, is it possible that you met with Fairchild in February of '81, reached this agreement, and someone other than you back dated these notes to February '80?

A. Best of-- I have answered your question to the best of my recoll-- I have told you what I can best recollect four years later, over four years later. That's all I can do.

Q. And that would be that the initial conversations and initial deal was cut in February '80?

A. Sometime around that time. I can't say it was that exact date because I didn't make a notation of it. I assume it was around that time when I-- when the-- because of the dates that's on the instruments that were delivered to me by Fairchild as I understand it. I-- I don't know would who prepared the instruments but I would assume that Mr. Fairchild's office did and I think they were delivered to Carroll Ingram, who prepared the notes, as best I can understand it, to correspond with the-- with the instruments. And Carroll Ingram delivered them to me, I think at my office in the Federal Building in Biloxi, in the first part of '81. What date, I don't recall.

Q. Is it possible, and I don't want to be repetitive but it's an important point. Is it possible that you only reached the agreement with Wiley Fairchild in February of '81?

A. I have already answered your question and gave you my best recollection based on what I can reconstruct from over four years later.

Q. Well, can you be mistaken on your recollection?

A. Well, I guess anybody can be mistaken about anything when you're trying to reconstruct and recall to the best your recollection.

Q. Okay, as-- from the best of your recollection, what caused the delay, the year delay, in your receiving the papers?

A. I don't know.

Q. Have you discussed this with either Ingram or Fairchild?

A. No. I was-- I was happy to get the instruments. The way the transactions turned out, two of the wells turned out good and one of them turned out not good at all.

Q. Well, since this matter arose, since we chatted in your chambers, have you discussed what caused the delay with either of these two men?

A. I-- no, I-- I've never discussed anything with Mr. Fairchild since that time. I called Carroll Ingram, after we had our discussion, as I indicated to you and Mr. Whitespan (phonetic) that I was going to do, and did, and called others to find out what this was all about and talked to them about it. And I don't think Carroll Ingram-- I didn't ask him, there was no reason to ask him at that time, because, as I told you, when I had inquired earlier of him why the instruments hadn't been forthcoming, he told me what I told you he did. That Mr. Fairchild was the kind of person that couldn't be pushed, he would do it in his own sweet time and there was nothing else he could do.

Q. Do you know whose decision it was to put February 25th, 1980 on those documents?

A. No. No, I don't. I do know whose it wasn't: it wasn't mine. I didn't do it and didn't have anything to do with it.

Q. Did you protest that date in any way?

A. No, I didn't. I didn't for the reason I told you.

Q. And Ingram-- neither Ingram or Fairchild ever made an explanation to you later as to either what caused the delay or why it was back dated?

A. Didn't ask for any-- I didn't have to, Ingram had already told me what I told you two or three times.

Q. When you--

A. And I do know this. Now, let's get-- I do know that I paid for these-- paid these notes, and I paid them by these original checks that I have, and made three payments. In March of 1962-- '82, rather, made the first payment, principal and interest, 10% interest as provided by-- in the note. I made the second payment in September of 1982, and that paid off one of them. And the other two were finally paid in March of 1983. One of them was paid a couple months early, three or four months, one of them, and the other two were finally paid about a month late. And here's--

Q. What triggered-- what prompted--

A. --here's the checks if you want to see them (indicating). And here's the recapitulation on what was paid, interest and principal (indicating). Here are the original checks sent to me-- sent by me, signed by me, endorsed with Deposit, W. R. Fairchild Construction Company.

And I have the notes marked Paid in Full dated, two of them, March 7, 1983, and one September 16, 1982, all here, by, it says, W. R. Fairchild Construction Company by R. L. Jarvis, Jr., paid in full, all three of them.

Q. Do you want--

A. I've given you copies of these before, I think, haven't I?

Q. No, not the checks. Do you want those to be part of the grand jury record? You want us to make copies? What do want us do with the copies?

A. All right, fine.

Q. What's your preference?

A. You may have them. I would like the originals back if I may, any originals of anything that I give, for my files, but you may make copies and substitute them if it's all right.

Q. Whatever you want to give the grand jury as exhibits, we'll be happy to--

A. Here are the checks (indiating) and

here's a recapitulation on what I paid on each of the three wells, the canceled checks. Here (indicating) are the three notes marked Paid, W. R.-- Paid in Full, W. R. Fairchild Construction, R. L. Jarvis, Junior.

Q. What prompted payments by you on the different occasions? Do you recall?

A. Yes. When I had a little money come in and I wanted to pay on them and save as much interest as I could as anyone tries to do.

Q. All right, then--

A. And, also, of course, let me say this to you. That, as I recall, I started getting some royalty interests, in 1982, from these wells, which gave me a little money that I could pay. I think it was in the first part of '82, I think around March of '82. And I had a little money that I could make payments on these notes with and I paid as we went along to save interest and also I wanted to pay as I could while I had the money in the bank.

Q. So is it fair to say when royalty payments started coming in you began paying your note back to Wiley Fairchild?

A. I began pay-- that's correct. I had

until, as you can see in the notes, 1983, according to the notes, to make the payments. There were no-- I didn't have to make periodic payments. I had until 1983, I think it was February of 1983-- it's reflected in the notes there-- I mean of '83. But, as I got some money from these royalty interests, I did make periodic payments, two of them, before I paid them in full.

Q. The terms of the note, when were they arrived at? Would it be back in February '80 or would it have been February '81?

A. Back in 1980, I had mentioned to Mr. Fairchild that I was going to borrow the money to make payments, to the best of my recollection, and I think he said something about he would carry at 10 percent interest and give me until-- time-- give me a reasonable time to pay them. And that was in-- the notes reflect the time that he gave me later.

Q. So it's your testimony that that was-- that agreement was reached originally?

A. Sometime back there to the best of my recollection. I don't know that it was the specific time at that time but the general agreement. But whether we agreed on a date certain for the payment at that time or whether that was in the notes when I received them, I don't recall. But, nevertheless, there's the-- there are the notes and they tell when the payments were due, and they were paid.

Q. You are familiar with financial disclosure statements that all federal judges in the United States, all congressmen and many, many executive officials need to fill out?

A. Certainly.

Q. Okay.

Q. And it's a law called Ethics in Government Act that prompted this required disclosure, and it started back, I think, in '78; is that a fair statement?

A. I think so, to the best of my recollection.

Q. Do you recall, without showing the documents, when the Fairchild oil leases were first reported by you?

A. Yes. They were reported in my financial disclosure statement for the year 1981, that is the one that was filed in May of 1982, reflecting the transactions for the year 1981. They are due every May, I think it is, of each year, for the previous calendar year. In other words, 1981 was due in May of 1982. All 1980 transactions were reported-- had to be reported in financial-- in May of 1981. So you'd have until May of the following-- just like you have for filing your federal income tax, April of the following year for the prior calendar year.

Q. So it's perfectly clear, when you filled out your statement in May '81, for the year 1980, you did not include the Fairchild leases but you included them when you filled out your document in May '82--

A. That's--.

Q. -- for the year 1981?

A. That is absolutely correct. And the reason I didn't is because there was no legally binding agreement entered into prior to the first part of '81 between Mr. Fairchild and me. It was not binding on any party because it was an oral gentleman's agreement. The legally binding agreement, as I want to repeat, was entered into in 1981. And that's when I reported, in May of 1982, that agreement for 1981. I disclosed that it was done in 1981, which is the truth. That's when the agreement was formalized and legally binding. And if I'd wanted to report it in 1980, of course, I could have reported it in May of 1981, if it would have been an '80 transaction, because obviously the deeds had even been filed for record in April of 1981, which was a month before the financial disclosure statement was due in May 1981 for the year 1980--

Q. Judge--

A. --but there was no transaction legally binding in 1980 so I couldn't report it for that year. I had to report it for the year of 1981 on my finaicial disclosure statement which was filed in 19--May of 1982, so I reported the transaction as a 1981 transaction, which it was.

Q. Judge, in all the documents that you brought, is there any paper that reflects when in 1981 the deal became effective?

A. You mean the financial disclosure statement?

Q. No. In all of the doucments you reviewed and in all the documents you brought to the court, is there anywhere a doucment that reflects when in '81 the deal actually became legally effective?

A. I have none, Mr. Weingarten.

Q. I think you told me before that it was your accountant that actually filled out the financial disclosure statement or assisted you or went through your files?

A. That's correct.

Q. Do you have any idea what document he would have relied upon to figure out that it was a 1981 transaction as opposed to a 1980 transaction?

A. Well, the only thing that I can think is this. We did not report any because there was no written transaction in 1980, and of course no transaction was reported for the year 1980 in the disclosure statement filed in May of 1981.

We didn't contend there was, never claimed there was, and don't claim there was now, a written agreement, a legally binding agreement. So we didn't disclose it May of 1981 for the year 1980 because there was none. So my only supposition is that when he saw the-- in the financial file that we furnished him to make all these reports, when he saw these notes and copies of deeds in the file dated February of 1980, which was the date on them, he apparently thought it should have been '81 and reported that as the date in our disclosure statement of May 1981. I wish he were here so I could ask him, but he died of a-- suddenly of a heart attack-- he was in his forties and he died, as I recall, in the fall of 1982. He dropped dead.

Q. Judge, in the negotiations with Wiley Fairchild, do you ever recall asking or demanding that more acreage be applied by him to you?

A. No.

Q. Was it sort of a take-it-or-leave-it deal, him presenting you with an option and you just saying yes, or was there actual negotiations going on?

A. No.

Q. Which one?

A. There was no negotiation. He told me what he would do and he told me, he said, "Judge, Carroll Ingram vouched for you." He said, "I think a lot of Carroll," and said, "I've read about you and read about your career and your record." And he said, "I've asked you why you want to do this." He said, "I've got a great deal of income and I'm a relatively wealthy man." He said, "I think it's a real fine thing for someone to want to do this for his children's benefit, to try to increase his income," said, "I like that." And he said, "I'm going to help you if I can." He said, "It's a gamble, as anything is in the oil and gas business." He said, "I think they're good wells but I can't guarantee them."

I said, "I understand that right up front and I'm willing to take the chance based on Carrol's vouching for you and your reputation as a real good businessman and apparently real good in the oil and gas business," been very successful. Carroll had told me, and he verified that. As I said, before that, I didn't even know he was in that. I knew he was in road construction.

Q. Judge, the-- it seems perfectly clear from your testimony and from the documents that the deal became effective legally in early '81.

A. The best of my recollection, that's correct.

Q. And everything--

A. Because the instruments were filed for record in April of 1981, as I disclosed on my financial disclosure statement that was filed in 1980. First, I didn't disclose, on the '81 statement, any financial-- any deal made in 1980, so it had to be in 1981, which I disclosed on my

1982. That's the report filed in May of 1982.

Q. And that reflects, and every document, I think, in your portfolio reflects, that the deal became effective in early '81, everything relating to the deal took place after early '81. An important question, and can you help the grand jury in anyway, what--

A. I didn't understand your question.

Q. I didn't get to it.

A. The preface. I didn't follow it.

Q. Maybe I can break it down.

A. By the way, would you please return these other documents that I loaned you so I may refer to them.

Q. Oh, sure. (Handing documents to witness.)

A. Thank you. All right.

Q. The point is this, Judge. It appears from your testimony, from the documents, that the transfer became effective in early '81, legally effective, practically effective. I mean, is that a fair statement?

A. I think I have stated that to the best of my recollection, Mr. Weingarten. This is several years later. I'm trying-- I tried to reconstruct this, I gave it all the best thought I could after you and I discussed this matter in April of this year, and that was the first time I had been asked about it, ever. And I have done my best to reconstruct it and bring in all these documents voluntarily, and I'm giving it to you and to the grand jury, and that's the best of my recollection.

Q. Can you help the grand jury in any way in testifying as to what Wiley Fairchild and/or Carroll Ingram may have had in mind when they back dated the deeds a year?

A. Well, you say "when they back dated." They're apparently dated at the time that Mr. Fairchild and I had the gentleman's agreement, or about that time.

Q. You paid interest--

A. I don't know that they were back dated, but that is something that you would have to ask them, Mr. Weingarten. I had nothing to do with the dating of the instruments and I can't read their minds.

Q. Well, understanding that--

A. It would be pure supposition and guesswork, what they had in mind.

Q. Well, could it be a coincidence that it was exactly a year before that that you had your conversation with Wiley Fairchild when the deal was cut? I mean, if interest is computed back to February 25th, 1981, that appears to be the time when the deal became effective.

A. Well, I don't know that it was February 25th, 1981. I said the first part of 1981. I don't know what day we actually-- it was actually signed. That was the date on the instrument, apparently, the February 25th, 1980, not '81. All I said was that sometime in the first part of '81, prior to April, when the instruments were actually sent for recordation, we know they'd already been executed then because I had them-- I had Carroll Ingram record them for me in the public records of these counties in April of 1981. So I knew it was a short-- a while before that that they were sent for recordation-- I mean that I had given them to Carroll Ingram to send for recordation. I don't know how long he held them.

Q. Maybe I misunderstood your previous testimony. I thought you had said that the Fairchild establishment or concern computed interest back to February 25, 1981.

A. I didn't say that. I said when we asked them to compute the interest, they computed it and gave us the figure. To the best of my recollection they computed it from sometime in 1981. I don't know exactly what date. I can't tell you it was February the 25th because obviously there was never a February 25, 1981 instrument. It was sometime in the first part of 1981 is all I can tell you. And the instruments had this other date and it was apparently around the time that Mr. Fairchild and I had the handshake and gentleman's agreement about it. They didn't become effective until sometime in the first part of 1981 to the best of my recollection.

Q. Not to belabor this particular point, but who provided you with the information that interest was computed back to early '81?

A. Mr. Bill Goodman, who has been assisting me in this matter. I think he might have had someone compute it.

Q. You had mentioned in your testimony that one of the wells was, I think, not so good and two wells were good?

A. Yes.

Q. Do you have any document there that

reflects what the output has been for those wells?

A. You mean in dollars?

Q. Yes.

A. Yes, I do.

Q. Would you just report to the grand jury what has been the net thus far on those wells?

A. I have computed it as of April 19-- 1984, this year. Two in May and one in April.

The one in Mobile County, the gross payment on it was over a peiod of months, was approximately twenty-five thousand dollars.

Q. When did the payments start?

A. I think they started in about March of '82, or somewhere in that neighborhood. On that one, maybe later. I think maybe September or October of 1982. And on the other, the Rogers well in Marion County, approximately twenty thousand dollars, twenty-one thousand dollars, May of '84. Of course, that's not counting what I had invested in them. You'd have to subtract that.

And, of course, what I did invest in them was money that I invested after taxes, after tax money, and these incomes would be subject to taxes of course. This is just gross.

In the Covington County tranascaction,

I have gotten twelve hundred and sixty dollars back as of May-- April of 1983. Less than the investment in it. And I don't know whether it will ever pay back or not.

Q. Is this oil or gas?

A. Gas.

Q. These are all gas wells?

A. Yes.

Q. When you purchase an interest, is it in perpetuity or do you get it for a period of time? Do you know?

A. I-- I guess it's as long as they produce and there's a market for it, I would guess. Nobody knows how long any of these things produce. I certainly don't.

Q. When you invested--

A. And I do know that they initially produced much better than they are now.

Q. They are on the decline?

A. Yes. They were-- they declined about half in recent months, recent-- quite a few months, half of net.

Q. Are you knowlegeable in the gas business or the oil business?

A. No.

Q. Were you a complete novice?

A. When I was in-- when I was practicing law some, I guess some 18 years ago, I invested in a few little wells. And one of them I think was supposed to be a producer, but what I paid out every month in expenses, I think, just about exceeded the income so it was really costing me to own an interest in that producing well.

Q. So you base--

A. And I did invest in some since that, this transaction, of course.

Q. At the time of the initial investment with Fairchild you were relying on his reputation as you testified? And Carroll?

A. And Carroll Ingram's vouching for him, yes.

Q. Do you have any other records that you brought that are relevant to the grand jury's inquiry?

A. I don't know what records you're talking about.

Q. Well, did you bring anything else you want to make a part of the record?

A. I brought everything that you asked us to bring.

Q. Could we go through those documents?

A. Yes. I brought the checks, I brought the promissory notes, and I brought the deeds. And I brought the recapitulation on what our income was. That's-- you didn't ask for that latter. I just brought it and tried to figure it out myself to give you whatever information I had.

Q. Is it--

A. I brought everything with me that you asked for on it.

Q. Okay. Is it your wish that we take these documents, copy them, and give you the originals back?

A. I think I've given them to you. Yes, these (indicting). Yes, yes.

Q. Those documents in that (indicating) file?

A. Oh, the documents you asked me to bring?

Q. Yes. Shall I relieve you of them now or--

A. You may. And of course you have the prom-- you have these (indicating), but I will give them to you, with Mr. Ingram's letter of April 3, 1981, to the various chancery clerks asking them to record these instruments in their public records pursuant to my request.

Q. Were they all actually filed in April of '81?

A. I have no way of telling you that. I assume they were because those cover letters to the various clerks--

Q. Make such request?

A. --makes such a request and I would assume they have been. And it was not necessary to record them for them to be legally binding, but I put them on public record because I wanted to because I believe in putting in public record what-- what transactions I enter into.

Q. What legal effect would making them of record-- what legal effect would there be?

A. Notice to anyone.

Q. So you would have priority if anybody made a claim?

A. They were legally binding once they were executed and delivered. They need not be recorded to be legally binding once they were delivered in writing.

Q. All right.

A. But I did that because I wanted to have them recorded of public record.

Q. Judge, as I discussed with you when we last met, of interest in this investigation is the drug case involving Wiley Fairchild's son. And I would like to ask you a few questions about that.

A. Be very happy to answer what I can.

Q. The grand jury has heard evidence that in August 1980 a plane landed, loaded with marijuana, at the Hattiesburg airport and that subsequent investigation caused law enforcement authorities to conclude that Drew Fairchild, the manager of that airport, played a part in that smuggling effort.

A. You told me that in our first interview in April of 1980-- 1984, this year.

Q. Right. When was the first time you became aware of that case?

A. I told you, and I'm repeating it, to the best of my recollection, I believe-- I don't know whether I read about it in the newspaper or heard about it or some-- or heard it on TV. There was some criticism of the state's handling of that case in state court, by the news media. And I don't know when that was but I would assume it was just a couple of years ago.

Q. Okay. The grand jury has heard

evidence that some of the people arrested at the scene were prosecuted federally and pled guilty and were sentenced, I believe, by Judge Cox-- not by you, by Judge Cox-- in federal district court in February of 1981. Would you have any knowledge of the progress of that case as it happened?

A. No, none whatsoever.

Q. Where does Judge Cox sit?

A. Judge Cox sits where he wants to sit. He sits in Jackson, Hattiesburg, Meridian, Biloxi and Vicksburg.

Q. And obviously--

A. I don't mean to be funny, but he's kind of like the 800 pound gorilla: he sits and does-- where he wants to and kind of does what he wants to.

Q. But it's your testimony that whatever happened in his court, vis-a-vis this case, was unbeknownst to you?

A. Absoutely. And if you have any information to the contrary, I would like you to tell me and the grand jury now because I would like to ask.

Q. Well, obviously--

A. Because there is none.

Q. If you testify, Judge, that you didn't know, we'll accept your testimony.?

A. Thank you. So we have that understanding.

Q. Eventually the case was indicted by the state. The grand jury's heard evidence to that effect. You testified that somehow, some way, there was some criticism of the way the state handled the case?

A. That's my best recollection.

Q. And your source of that information?

A. My what?

Q. Your source of that information?

A. As I've told you awhile ago, I either read something about it in the newspaper or heard something about it on TV or someone told me they had read something about or heard something about it, I don't recall.

Q. The grand jury has heard evidence that the prosecutor, the state prosecutor, who eventually handled the case was an individual named Bud Holmes. Is he a friend of yours?

A. Very good friend of mine, long time friend, yes.

Q. Did he ever discuss the Drew Fairchild case with you?

A. No, not to the best of my recollection. I think I would recall if he had.

Q. Was the criticism directed--

A. And as you now, Mr. Weingarten, the federal government has nothing to do with a state court prosecution. Federal courts can't even interfer with an ongoing state criminal case under the law, with one very narrow exception of bad faith as during the civil rights cases, problems, in Mississippi. The federal courts are prohibited, even if we were asked by properly filed proceeding, from interferring in any way or having any input or say so with reference to any state court--ongoing state court criminal action.

Do you agree with me or not? You're a good lawyer, I'm sure.

Q. Judge, I'm sure you can appreciate in a grand jury it's best to proceed with the prosecutor asking the questions.

A. Well, I understand. I'm not trying to be smart with you and I'm not trying to turn around and ask the questions, but I think the grand jury has a right to know what the law is as well as the facts.

Q. You understand that the United States has a--

A. I'm not arguing with you.

Q. -- responsibility to provide the grand jury with all relevant law and facts.

A. All right.

Q. We take that responsibility very seriously.

A. I know, I don't question that. That's why I asked you, in all sincerity, if you know that under the Younger versus Harris doctrine of the United States Supreme Court that that is the law. If you don't want to answer it, I'm sorry. I'm sorry I asked it, go ahead.

Q. Judge, was the criticism that you read about or heard about directed at Bud Holmes' handling of the Drew Fairchild case?

A. To the best of my recollection, it was.

Q. And what was the nature of the criticism?

A. I don't recall precisely but I think it related to the delay or that-- or somethng to that effect. I don't-- I don't recall. It didn't give much detail about it--

Q. All right.

A. -- if I remember correctly. And I think I either read-- I think I read it in a newspaper. I think that's where I saw it. And whether it was Hattiesburg or Jackson Clarion Ledger, I don't recall.

Q. So we're just perfectly clear, that information did not come to you from Bud Holmes?

A. That's correct.

Q. Did Wiley Fairchild ever discuss the case with you?

A. No, not to the best of my recollection. I think I would recall that if he had, believe me, but I don't recall that he ever did.

Q. And accepting your answer as you state it, I need to ask the follow-up questions.

A. Very well.

Q. Did Wiley Fairchild ever ask you to do anything vis-a-vis his son's case?

A. Absolutely not.

Q. Did anyone on behalf of Wiley Fairchild ever ask you to do anything on behalf of his son's case?

A. Emphatically not.

Q. Did the U. S. Attorney in Jackson, Mississippi, or any of his subordinates, ever ask you or talk to you about the Wiley Firchild case-- excuse me, the Drew Fairchild case?

A. No, not-- not before all this came up, when I asked them what this was all about. And, Mr. Weingarten, let me say this to you, and I think the grand jury should know this.

First of all, a federal judge has no authority, no power, no say-so, in who is or who is not prosecuted in federal court. That is the Department of Justice decision, your people you work for, either directly from Washington or through the United States Attorney's Office. They have the sole authority to decide whether to proceed against someone criminally in federal court or not. A federal judge has no say-so at all about that. Certainly he can't institute the action. That's up to the Department of Justice. And certainly he can't interfer with it. That's been-- that's been determined when Judge Cox and former U.S. Attorney Robert Hauberg had a confrontation some many years ago, I think either right before or right after I went on the bench. And that was decided by the Fifth Circuit Court of Appeals, but, and of course, it was good law, good clear law.

But the Department of Justice has the sole discretion and responsibility and authority whether to indict somebody or charge them and proceed against them in federal court. The federal judge has no such authority, and I think we both know that. I'm not going to embarrass you by asking you if you agree with me because I don't want to look like I'm questioning you. But the grand jury should know that. Many people don't know that.

Q. Let me-- maybe this will help. I assure you, Judge, at the end of the questioning, you'll have an opportunity to say whatever you want to say about it.

A. I understand, I'm trying to explain my answer. And if you disagree with me or disagree with what I'm stating, that about the law and the power and the authority of a federal judge and of the federal prosecutor, please say so and disagree with me because I don't want to give the grand jury any misleading or false information.

Q. Actually, I think it would be fruitful if we-- if I confine my questions to asking factual questions.

A. All right, go ahead.

Q. I'm not even sure if the last question was answered. I'll ask it again.

A. All right.

Q. Did anyone from the U. S. Attorney's Office discuss the Drew Fairchild case with you prior to the August '81 indictment?

A. Absolutely not.

Q. Were you alone with Wiley Fairchid in his office?

A. Yes.

Q. On how many occasions?

A. I don't know. More than once, discussing the gas interests.

Q. Carroll Ingram would not have been present on those occasions?

A. No. Sometimes Carroll was present, at least once, maybe twice, but I have talked to Mr. Fairchild separately, yes.

Q. So to place the events in context, would any of those meetings with Mr. Fairchild have taken place in 1981?

A. I don't recall. I wish I could tell you, honestly, but--

Q. Well when did--

A. -- if there were any in 1981 or not.

That's over three years ago. I had several meetings as I told you.

Q. When would the most recent one have been?

A. In his office? I don't know, but it's been many months ago. And that's the only time I've ever met with him. I've talked with him on the phone but that's-- a couple of times about this. And especially one time, when the production dropped in half, I wanted to know what happened and he said something about the gas supply, that the supply, that is the demands or the curtailment or something was what caused it. But that's been months ago, many months.

Q. Was that a telephone conversation or a meeting?

A. Telephone conversation.

Q. The last meeting would have been-- was there a meeting after the effective date of the transfer?

A. Not to my best recollection, but I couldn't honestly tell you that one way or the other and I wouldn't want to deceive anyone or give a false answer.

Q. Your best recollection is the meetings took place before?

A. (No reply)

Q. You don't know?

A. I know-- I know some of them did. Whether any took place after that, I don't recall. This has been over three and a half years or four years ago, Mr. Weingarten. I had no reason to make a notation of the dates of these meetings.

Q. February 1980, the deal is cut, what would have caused you to meet with Wiley Fairchild again before the effective date of the transfer?

A. I don't know of any reason. That's why I doubt that I did, but I--

Q. I don't mean to be obtruse but--

A. You're not.

Q. --how many meetings are we talking about?

A. All together?

Q. Yes.

A. I don't know, there was more than-- more than two. I don't think there was as many as five or four.

Q. Just--

A. Somewhere in that neighborhood. I'd say two to five, probably.

Q. If the first meeting--

A. That's my best guess.

Q. If the first meeting produced the deal, what would the other meetings have been for?

A. I met with him several times. One time he told me that he thought he was over-- maybe overcharging me for these and would maybe put me in another later. He mentioned something about the name of a well was-- I don't know, remember when this was-- it had something to do with the name School in the property. But he never did and there never was any mention of it.

And, as I say, I don't know of any reason I would have met with him after the transaction was finalized in the first part of 1981, but I can't say for sure. It's possible.

You're asking me about-- I-- I don't like to keep repeating it-- but three or four years ago, and I'm trying to reconstruct this to the best of my recollection and knowledge.

Q. Did he ever visit with you in your chambers in Biloxi?

A. No.

Q. The meetings would have taken place here in Hattiesburg?

A. That's correct.

Q. Typically, what would have triggered the meetings? Would you be in town on your way to--

A. Sometimes, or may-- I think the first time I just came to see him when Carroll called me. And sometimes maybe I might have been passing through going to Jackson to hold court. I don't know, I don't recall that.

Q. Just to sum up, Judge, the-- is it fair to say that the effective date of the transfer was February 1981 or around there?

A. The formalization of the agreement, that is putting it in writing and making it binding, was somewhere in the first part-- the best of my recollection-- of 1981 because the written instruments were sent by Carroll Ingram, pursuant to my request, for recordation in April 1981. You have them before you there.

Q. Okay. I just--

A. So, consequently, it was either late-- I would assume the first part of '81 or somewhere in there.

Q. And it's your testimony that a gentleman's agreement was reached a year earlier.

or approximately?

A. I've already told you that.

Q. We're summing up, summing up. Is that a fair statement?

A. Yes. I don't know it's a year to the date but approximately. It was a long time before. Let me put it that way.

Q. And do you know--

A. I would assume it was the first part of '80, could have been the last part of '79, but I-- that's the best recollection I have of it at this late date in 1984.

Q. And it's your testimony that you had nothing whatever to do with the placement of the February 25th, 1980 date on the documents?

A. That's correct.

MR. WEINGARTEN:

Mr. Richter?

THE WITNESS:

May I have a little water, please?

MR. WEINGARTEN:

Sure. Why don't we take-- is there water up there?

THE WITNESS:

I don't know. I can go on, that's all

right.

MR. WENGARTEN:

We can take a break.

THE WITNESS:

That's all right. Go ahead. It will delay this.

EXAMINATION

BY MR. RICHTER:

Q. Now, Judge Nixon, based on your financial-- I guess you set the effective date of the transaction as 1981 based on your financial disclosure form and when the deeds were filed; is that correct?

A. Well, and the fact that I know that we had talked about it and agreed on the gentleman's agreement some many months before. So that's-- that's why I can best reconstruct it.

We're going over the same thing time after time. I don't mean to be obtruse, either, but I don't know how many times you want me to answer the question.

Q. Just answer the question is all we want. Basically, when these deeds say February 25th, 1980, it's your testimony that they were probably drafted in 1981 and back dated to reflect the gentleman's agreement?

A. I don't-- you said back dated. I said my best guess would be that they were dated at that time, by whoever prepared them, apparently Mr. Fairchild--

Q. In 1981—

A. -- to reflect the approximate time that we had the gentleman's agreement.

Q. Well, the dates don't say that the transaction took place in '80. It says that's when they're signed. Isn't that right? In other words, the dates on these documents aren't the date of the transaction, they're the date of the signature?

A. They speak for themselves, and yes.

Q. Well, is this (indicating) the promissory note that you signed?

A. Yes.

Q. What is the line--

A. It says witness execution the 25th day of February 1980, yes.

Q. What does that mean to you: Witness execution hereof this 25th day of February 1980?

A. Well, just what it says.

Q. It means it's signed on 1980. Right?

A. Right. But if I was trying to contend that these instruments were signed in 1980, I could have reported this on my May 1981 financial disclosure statement because these instruments were filed for record a month before it was due. I reported them-- I never attempted to report them or make anyone believe that these instruments were executed in 1980 because on my financial disclosure statement for 1982, filed in May 1982, and which is now-- I hope the grand jury has them-- I reported these transactions to be 1981 transactions. And there (indicating) they are.

Q. Well, the point of the matter is if there was an effort to-- made to show that this transaction took place in 1980, even though the papers were signed and prepared in 1981, couldn't the papers have been drafted to reflect that the agreement took place in 1980 but then the signature line be honestly filled out saying that signature this 25th day February 1981?

A. I didn't prepare the instruments and I never led anybody to believe or tried to lead anyone to believe that they were prepared other than 1980-- were executed anytime other than 1981, and that's reflected on my public financial disclosure statement now before the grand jury. At no time did I ever report to anyone or attempt to tell anyone that they were executed in 1980.

Q. Except where you signed your name and it said "executed 1980"?

A. You have my financial disclosure statement.

Q. Sir, did you sign this promissory note as it said it was signed? I mean it doesn't say the transaction's effective 1980, it says signed 1980.

A. I told you I signed that and I've told you why the-- apparently Mr. Ingram put the date on to conform with what Mr. Fairchild put on the instrument, to reflect the date on which the gentleman's agreement was reached. Now you--

Q. Did you or did you not want these documents to accurately reflect the date of the signing and the date of the transaction?

A. There was no particular significance to me at that time except Mr. Fairchild apparently chose to put the date the gentleman's agreement was reached and I was willing to pay the interest. You have my financial disclosure statement--

Q. You--

A. Wait just a minute, let me finish. In my May 1981 financial disclosure statement, filed for the year 1980, is there anything on there stating that these instruments were executed or signed in 1980? No. They are not reflected. In my financial disclosure statement, my public sworn statement that is filed and of record and notice to the public filed in May of 1982, it reflects that these instruments were executed in 1981. So why would you think that I wanted someone to believe they were done in 1980 when I disclosed on my statement filed 1982, long before any of this ever came up, that these were instruments and transactions in 1981?

Q. Well, that's the question, Judge: why would anyone want to date these to show 1980--

A. You have to ask--

Q. -- to show they were signed--

A. You have to ask the preparer. And that's my only-- my best surmise as to why they did it.

Q. Well, you, as a federal judge, when you sign something, it says witness execution hereof this 25th day of February 1980, and it's 1981, that didn't trouble you?

A. What is the significance of the date 1980 and 1981?

Q. Well, what's the significance of signing it?

A. I asked you: what's the significance?

Q. Sir, I don't answer the questions. I'm not under oath here.

The-- what is the significance of the date on the signature line?

A. I have already been over that several times with Mr. Weingarten.

Q. Well, does this date here reflect the date of the transaction or the date of the signature?

A. It reflects, apparently-- apparently reflects the time or about the time that the gentleman's agreement was entered into and this was formalized by signing the instrument.

Q. As a lawyer and a judge--

A. Mr. Fairchild apparently dated it that day and I honored it. I never tried to tell anyone it was a 1980 transaction. But what's the significance of whether it was '80 or '81?

Q. I believe you testified that between February 1980--

A. Because-- and I understand what Mr. Weingarten told me earlier because is was, he said, the significance, when I asked him that question, was that there was a drug bust in August of 1980. Well, I don't know what significance that has as far as I'm concerned because I have had nothing official or unofficial to do with the Drew Fairchild case or any of the other parties involved either in federal or state court.

Q. You finished?

A. Yes, for now.

Q. In late 1980 and early 1981, how many federal judges were hearing criminal cases in the Southern District of Mississippi?

A. Well, regular judges in active service in this district-- I say regular judges, we didn't have senior judges at the time, I don't think-- there were three.

Q. So, what is the probability, that if someone's indicted in federal court, of their case coming to you--

A. Well, that's--

Q. -- at that point in time?

A. That's all done by lot and drawing of numbers, but no federal case can come to a federal judge until it's presented and an indictment had by the Justice Department.

Q. What is the probability--

A. It can't be instituted in federal court unless the Justice Department institutes it. And until that time, there is no possibility of any criminal case going to any federal judge. And the Justice Department never instituted a criminal action against Drew Fairchild in federal court.

Q. Had Drew Fairchild been indicted in early 1981, what was the probability of the case coming to you? Had he been indicted, what would have been the probability?

A. You are asking "had he," he never was.

Q. I'm asking "had he." Had anybody been indicted in early 1981, what is the probability of the case coming before you?

A. I don't know what the probability was. I told you that the cases are drawn by lot--

Q. And how many judges could have--

A. -- blindly.

Q. How many judges can there possibly be?

A. Three.

Q. And you are one of the three?

A. Yes.

Q. And--

A. But there was never any federal charges filed by the Justice Department against Fairchild in federal court.

Q. Sir, you've stated that. That's not my question.

A. All right.

Q. Is it not true that lawyers have ways of getting at least one of the other judges disqualified from cases by retaining various law firms, that lawyers are able to increase their odds of getting a case in front of one judge or another?

A. Well, let me say this to you, sir. That may be possible in some places, but I have more faith and more trust in the lawyers practicing law in the Southern District of Mississippi than to charge them with such a devious and deceptive practice.

Q. Now, sir, once a criminal defendant is convicted in federal court, who has total discretion over the sentence that that individual would recieve?

A. (No response.)

Q. Is that a hard question?

A. No.

Q. What's the answer?

A. You mean who sentences them? We all know the judge sentences someone who's convicted if he's indicted, if his case is presented by the Justice Department, the U.S. Attorney or directly from Washington. But if it's not, no one sentences him because he's never tried, he's never charged in federal court.

Q. So if a person--

A. And Drew Fairchild was never charged in federal court. And that was up to the Justice Department to decide either directly or through the U.S. Attorney, and apparently they chose not to do so. So if you want to know why that was not done, ask your department. I don't know.

Q. Sir, if Drew Fairchild had been indicted and had his case been assigned to you, and had he been convicted, okay? Who would had total discretion over his sentence?

A. If--Mr. Richter, if an elephant had wings, he could fly, maybe. But we're-- I thought we were dealing in facts here, not if this and if that and--

Q. Sir, I want the jury to understand--

A. -- that never took place--

Q. I want the jury to understand, as you said you wanted them to, what your power was and what your power wasn't.

A. That's correct.

Q. And that's the purpose of the question.

A. Yes.

Q. Had Drew Fairchild been indicted in 19-- early '81 and the case been assigned to you, and he was convicted, who would have total power over his sentence?

A. I would have if I hadn't recused myself And I might say, Mr. Ricther, that with respect to this Covington County field--

Q. Yes, sir?

A. I was assigned a case within the last year or so that dealt with that and I recused myself, and that fell to another judge, because I had an interest in this well. If I had any interest in anything, have any possible conflict of interest, I or any other judge who's worth his salt is going to recuse himself and get out of the case.

Q. You stated that the reason you didn't push to get the deeds to get the transaction finalized between February 1980 and February 1981 was that you were told Wiley Fairchild wasn't that type of person, is that correct? That you don't push him.

A. That's what Carroll Ingram in effect told me.

Q. Is that what you--

A. Now, he might not have used those words but he intimated that he would take his own time doing what he wanted to do.

Q. Is that why you never got on the phone throughout 1980 and said, "Hey, I thought we had a deal. I wanted a deal, where's the papers?"

A. Yes. I talked to Carroll about it a few times.

Q. Did you ever in 1981 or 1982 instruct anyone on your staff to call Wiley Fairchild's office and ask why you weren't receiving royalty deeds and when are you going to receive royalties? Not deeds but royalties. Why you hadn't been receiving your royalties and what's the delay and why hadn't there been a division order?

A. Yes, I understood that the wells were producing sometime, I don't know when it was, and there was no income coming and I wondered why.

And we inquired and they said there had to be a division on it and it hadn't been forthcoming.

Q. But you never inquired about why the deal that you had struck hadn't been effectuated?

A. I have already answered that several times.

Q. You did. I believe you said you were good friends with Bud Holmes?

A. Yes, and many other lawyers in our district. Down in the state of Mississippi, people are friendly with each other. Friendship stops at the courtroom door with respect to lawyers and judges as far as I'm concerned, and as far as any good lawyer is concerned, but when I became federal judge, I didn't consider myself annointed. I considered myself appointed and I didn't give up my First Amendment right, I didn't give up my right to continue to be friends with anyone I had been friends with before, and will not. I practiced law at the same time with Bud Holmes, and many other laywers, and we've maintained our friendship throughout the years. And that's what it's been: friendship.

Q. Can you describe the nature of the friendship somewhat?

A. What do you mean?

Q. Well, there are friendships where you would each lunch together once a month, where you socialize together in various ways, where it's strictly business, strictly pleasure, the-- are you-- would you say you're-- and I guess any way you choose to characterize it in somewhat more detail than saying it's just a friendship.

A. Well, I said we've been very good friends, like I have been with many other people and many other lawyers.

Q. Would it be fair to say you're particularly close with Mr. Holmes?

A. I don't know if I'm "particularly close." We're very good friends, I'm not here to deny that. I'll never deny friendship with someone. But why? What's significant about that? What-- what's your point, Mr. Richter?

Q. Sir, again, I don't--

A. Let's be honest about it. What are you asking?

Q. -- answer the questions.

How often do you generally see Bud Holmes?

A. Oh, it varies. Not real often. You

know, sometimes-- it varies, it depends on the circumstances or when. We don't see each other once a week or most of the time maybe not even once a month unless, you know, something throws us together.

Q. I believe you stated that you reviewed the various financial documents?

A. And I might say that I was not only a friend of Bud's but his family. His mother, Mrs. Mary Lee Holmes, who just died, was a pillar in the Methodist Church, buried right across the street. She was one of the finest people I ever knew. She used to be mayor of Hattiesburg. And his father was proiminent, prosecuting attorney, his father was, and I knew his mother real well. She was a fine lady. And our families-- I've been friends of the family.

I'm not trying to deny that in any way or play that down, because I have been with so many other lawyers and so many other people, and am, and I'm proud of that fact. That I'm-- I can be a friend of many friends among the bar, practicing attorneys.

Q. I believe you testified that you had reviewed the-- some of the financial documents in terms of how much you paid and how much you received for the various wells; is that correct?

A. It was recapitulated for me by somebody.

Q. Is it fair to say, based on that review, that at no point did you pay on the note-- this is a little complicated, bear with me-- at no point did you pay more on the note-- the notes than you had already received in royalties?

A. I don't know. I haven't checked that out.

Q. Is it possible, in other words, or at least an approximation, that basically you didn't pay these notes until you got the money back on the investment, than you paid for them?

A. Well, I had a certain period of time to pay the notes according to the terms of the notes. They were paid-- one of them was paid a little in advance, two of them were paid a month late and I paid some periodically twice. On two other occasions I made payments in the meantime which I wasn't obligated to pay. But as I got some money in from the royalties, I paid on them; that's correct.

Q. So basically--

A. They were paid in full.

Q. --you were paying with the-- with the investment-- for the investment with the income from it?

A. Well, let me say this. I just didn't take the income and transfer it over. It's supplemented any income that I had, certainly-- I don't know in what amount-- but I had enough money to make payments on the notes and I paid on them a little in advance.

MR. RICHTER:

I have no further questions.

MR. WEINGARTEN:

All rigtht. Judge, do you have anything you want to add?

THE WITNESS:

Yes, I do.

I want to say this. I-- Here (indicating) are your notes too, copies of your instruments, rather.

I came here voluntarily and am very happy to cooperate with this grand jury and give them all the information that I have and that I could. And I have always thought everyone should do that, and that goes for the grand jury over which I'm supervising right now, the other federal grand jury that's sitting at this time. I have nothing at all to-- had nothing to hide or nothing to withhold and I brought everything that you have asked me to bring.

And I want to say this. That I've been told and led to believe and read in the newspaper and heard on the news media so much about this is an investigation of the Drew Fairchild criminal case. Now, I have had nothing whatsoever officially or unofficially to do with the Drew Fairchild criminal case in federal court or state court. I don't need to reconstruct anything with reference to that. I've told you that from the beginning.

I have never talked to anyone about the case, any federal judge or state judge, federal prosecutor or state prosecutor, and I never handled any aspect of this case in federal court. As you said, Judge Cox handled it. I don't know where-- someone told me maybe Judge Russell handled one of the other defendants also and-- but I never handled any part of it, never had a thing to do with it at all, and never talked to anyone, state or federal, prosecutor or judge, in any way influence anybody with respect to this case. Didn't know anything about it until I read that account in the newspaper. Didn't even know Mr. Fairchild had a son when I was dealing with him in the business transaction.

So I want to say that because I understand that's what this is all about. The investigation is apparently, if the news media is correct, and if I understand it correctly, that's what this is about, the Drew Fairchild criminal case.

And I want to say one other thing. I-- it takes a lot of control on my part not to get-- to say it any stronger. I very deeply resent any insinuation of any kind that I would do anything of that kind. Not only are there no facts to support it, but this has really-- all of this has really hurt and caused pain to my children and my wife and myself, personally. It's an attack on my personal integrity and reputation and we have suffered through all this publicity and everything without any foundation or support of any kind in the way of evidence to support any such accusations of my having anything to do with this case.

But even above and beyond that, it's also an attack on the federal judiciary in the state of Mississippi, the federal judges. I've devoted 16 years, and I've been happy to do it and proud to do it, as United States district judge. My record is unblemished, I'm proud of it. And this has been a terrible thing on-- attacking our reputation, tearing our reputation down, based on something like this, with no supportive evidence, after 12 years of-- next week, of good, unblemished service. I have never done anything improper, illegal, unethical, and I don't intend to. So I resent it because it is a bad reflection, all this type stuff, on the federal judiciary in the state of Mississippi.

But let me just say in parting, Mr. Weingarten and Mr. Richter, I even more-- more am outraged by the insinuation that I would assist anyone involved in drug trafficking, bringing drugs into the state of Mississippi. I have taken care of those kinds of people who have come before me. Most of them are in the federal penitentiary. Most of them will be, go there. But to me that is as bad as someone going into a bank with a gun and robbing. I've got four children. I'm raising four little girls and I know what drugs do to people. I have seen it since I have been on the bench.

And I want to say this too. That I even resent it as much or more because I have always been of the opinion, and always will be, that the man who broke into my 70-year-old mother's home and murdered her in 1965 was either using drugs or broke in to get money to buy drugs. So I'm outraged and I really resent any such insinuation, that this kind of accusation has ever been made against me without supportive evidence.

I appreciate the opportunity to come before this grand jury and give them the facts and tell them how I feel and I appreciate your letting me do so.

MR. WEINGARTEN:

The procedure's, Judge, at this time--

THE WITNESS:

Before I go, I would like to ask anyone on this grand jury if there's any question they would like to ask me with reference to the Drew Fairchild case, because I'll be glad to answer it.

MR. WEINGARTEN:

Judge, let me explain the procedure, at this point, that we're using. We'd ask you to excuse yourself for a second and let the grand jury discuss among themselves whether or not they want any other areas explored.

THE WITNESS:

All right.

MR. WEINGARTEN:

So if you'd be kind enough to please just step outside, and we'll get you when that time arrives.

THE WITNESS:

I'll be happy to.

(WITNESS LEAVES THE ROOM.)

MR. WEINGARTEN:

(WITNESS RETURNS TO THE ROOM)

MR. WEINGARTEN:

Q. Judge, the grand jury wants clarification on two questions. You mentioned a recusal that may or may not be related to the Fairchild drug case.

A. No. This was a civil action involving some oil interests in this oil field-- I think it was the Covington County field--and of course I had an interest in this production in this field. So that was a civil case, completely unrelated to this, but since I had an interest in that, I recused myself because it certainly wasn't proper for me to handle that case because-- but it would have affected my interest in that.

Q. Just so that we're clear, one of the three wells that you had an interest in, there was litigation that was assigned to your court?

A. That's correct.

Q. And you stepped aside?

A. Civil case. Yes, that's right. Yes.

Q. The other question is-- one of the grand jurors wants to know-- when you saw the February '80 document sitting on your desk, and it was 1981, were you concerned or were you irritated that you may be paying interest on a note that was not legal until that very day?

A. Well, Mr.-- I had agreed to pay the ninety-five hundred dollars and it would have involved additional payment but I was willing to pay it. I wasn't going to argue about the matter because Mr. Fairchild had agreed to let me invest in the field and said that he would let me do so and I just didn't feel that I would raise any question about the matter, frankly. And, as it turned out, I don't believe I was even charged for interest. But I didn't know that until, as I told you, the other day when I recomputed it. I thought I had paid since the 1980 transaction.

And I do have my financial disclosure statements here. I thought they were in evidence, the one filed in May of 1982 reflecting that this transaction is a 1981 transaction. So may I hand it (indicating) to you to be put in the record?

Q. Sure.

A. I don't have a copy of my 1980 statement filed in May of '81, but if you have a copy, which I hope you do, I'd like the grand jury to see it because I did not list this transaction on it as a 1980 transaction. I listed it on '82 as a 1981 transaction.

Q. Why don't we put all your statements in evidence?

A. May I give you this (indicating), please? (Handing document to Counsel.)

Q. This is 1982?

A. That's the date it was filed for the year 1981, yes.

Q. Is this the amended return or the original?

A. That's both. Apparently my CPA didn't break down the oil interest that I acquired, and I acquired four, three more in 1980-- in 1981, in addition to this, and they're all stated. It was sent back to break them down and that's what I did. That's what we did, and filed it.

Q. Just so we-- the grand jury might not be clear on that procedure, not being familiar with the disclosure statements.

A. All right.

Q. Is it fair to say, when you first filed your disclosure statement in May '82, you reported, for the first time, oil interests?

A. That's correct. For 1981, and filed in May of 1982. I reported this transaction and the other three that I had entered into, completely unrelated to this, for the year 1981.

Q. And when you first filed the document, you put oil and gas royalty and working interest, and then, paren, acquired in 1981?

A. That's correct.

Q. Is it fair to say the court sent the document back and made a further request?

A. Judge Tamm (phonetic) did, yes. He was in charge of this. Right, break it down and give the dates. And that's what Mr. Logan apparently did and that's why I told you he chose the February '81 date, apparently because he knew we didn't-- I didn't acquire this in 1980 and he must have thought it was a mistake on the instrument and should have been February 25, '81. As I say, he's deceased now. And I wish I could produce him but he died of a heart attack.

Q. Just so we finish, the amended return lists oil and gas royalty interest: One, W. R. Fairchild Construction Company, Ltd., and then three others that are unrelated to Fairchild?

A. That's correct. I say one, of course one was the three wells, the transaction with Fairchild.

Q. I see.

MR. RICHTER:

Q. But prior to having been specifically requested by Judge Camm (phonetic)?

A. Yes.

Q. You didn't put on the disclosure form who you had the oil royalty--

A. Originally, my CPA didn't do that. And Judge Tamm (phonetic) sent it back and asked us to break it down, and we did.

Q. So the reason it was included was because it was specifically requested by--

Q. Yes, that's correct. And that's not

unusual. Most of the time we have to-- we have to be so specific with the statements, make corrections, Judge Tamm (phonetic) sends them back to--

Q. That was the one thing on that form that said you had not completed it to their satisfaction?

A. All of those-- all four of those transactions of 1981, yes, including this one and three completely unrelated ones, oil and gas.

MR. WEINGARTEN:

Q. On this document I note that it's indicated that the value of the oil and gas working interest originally was placed at fifteen to fifty thousand dollars. Was that totaling the four?

A. I don't know how Charles Logan did it. He was my CPA and that's what I paid him to do. I don't know how they evaluate an interest in an oil and gas well. I know what the income that comes from it-- it's not like going out and saying it's a piece of property worth such and such because I--I don't know how to do it to begin with. And, secondly, you never know what the production is going to be or when it's going to run dry. How they eveluate it, I have no idea.

Q. Just getting back to the one question the juror asked.

A. All right.

Q. I'm not sure he's going to be satisfied. As you sat there in '81 and you saw that the deed or the notes reflected an '80 date, a year before, and the notes were for about ninety-five hundred dollars at 10 percent, I guess that's about a thousand dollars.

A. Nine hundred and fifty dollars.

Q. Nine hundred and fifty dollars, obviously. Why didn't you just pick up the phone to Wiley, if you had this relationship, this on-going relationship, and just say correct it?

A. I-- I've told you already I appreciated the man putting me in the thing. He asked me why, I told him. He said he thought it was a worthwhile project, he hoped-- it was not a sure thing, it was a gamble, but that he would do it at-- because of Carroll Ingram's request and because of my motivation.

Q. Okay.

A. And that's-- that's the reason.

Q. Okay, we thank you for--

A. But--

Q. -- for your testimony.

A. -- I'm puzzled. Of course, I know why you're asking the question. But, as I understand it-- well, go ahead. I've already answered your question.

Q. All right.

A. I thought this was an investigation of handling the Drew Fairchild case, which would be the only possible charge of a crime herein, federal crime, and I think I've answered that to your--

Q. Okay.

A. Unequivocally, I had nothing to do with that.

Q. Thank you for your testimony. We'll make copies of the documents and send the originals back to you.

A. All right.

Q. Or to your lawyer.

A. That will be fine.

Q. What's your preference? Your lawyer?

A. It doesn't matter. Mr. Goodman has been looking after this because of my busy schedule, and you may send it to him, Bill

Goodman, Watkins and Eager, in Jackson, or to me. It doesn't matter.

Q. Thank you.

A. You're welcome. Good day, ladies and gentlemen.

(WITNESS LEAVES ROOM)

# CERTIFICATE OF COURT REPORTER

I, Dale N. Milford, CSR, RPR, Official Court Reporter for the United States Special Grand Jury for the Southern District of Mississippi, impaneled as a Special Grand Jury on July 18, 1984, and the order appointing the said Dale N. Milford, dated February 21, 1984 and filed with the Clerk of the United States District Court for the Southern District of Mississippi, hereby certify that the foregoing 99 pages, and including this page, contain a true and correct transcript of the proceedings had in Special Grand Jury taken by me in Stenotype and later reduced to typewritten form to the best of my skill and ability.

WITNESS MY SIGNATURE AND SEAL this the 7th day of August 1984.

DALE N. MILFORD, CSR, RPR,
Official Reporter and
Notary Public

My Commission Expires April 18, 1986

COMMITTEE EXHIBIT NO. 24

In recent days my name has been headlined by the media in connection with a special grand jury in session in Hattiesburg. Published news reports, which quote unidentified "sources", have suggested or implied that I may have acted improperly in purchasing some oil and gas interests from Mr. Wiley Fairchild; nothing could be further from the truth.

I did not comment to the press prior to my appearance before the grand jury. I wanted the grand jury to hear firsthand all facts and information in my possession, and I felt that premature comments to the press by a judicial officer would be inappropriate. I voluntarily appeared before the grand jury on Wednesday afternoon. Now that this has taken place, I do not believe I should be expected to sit back and not respond to totally unfounded and false suspicions which have been widely published and distributed.

The facts are that in approximately the early part of 1980 I had an opportunity to purchase from Fairchild companies some interests in two wells being drilled in Mississippi and one in Alabama. My total investment was $9,500.00, plus interest. The papers were delivered to me some months later. I paid what I believed to be a fair price. When the purchase was finalized, I reported the details on my financial statements which are open to public inspection. The conveyances to me were duly recorded in the public records. That represents the sum and substance of what occurred. It was a normal and straightforward business transaction.

I have read in the newspapers of a reported investigation of the handling of state drug cases against Mr. Drew Fairchild and others. The history of these cases can be provided by state authorities. I do not know Mr. Drew Fairchild; I have in no way participated in federal proceedings against other alleged participants with Mr. Drew Fairchild; I have never discussed the Drew Fairchild matter with Wiley Fairchild or any persons associated with the Fairchild companies; I never attempted to influence the handling of any aspect of the case; I have had absolutely nothing to do with any phase of the Drew Fairchild affair.

I have served as a Federal Judge for sixteen years and have done everything in my power to serve honorably and capably. I am a Chief United States District Judge for the Southern District f Mississippi with awesome responsibilities. Both as a judge and as a private citizen I stand ready to continue to cooperate in every appropriate way with this and any other investigation. While I expect no special treatment from the media, I believe that responsible reporters and journalists would agree that no citizen's name and reputation should be tarnished by false insinuations. Certainly the judicial office which I am privileged to hold should not be wrongfully subjected to doubt or distrust.

This statement is being issued so that speculation can end and the true facts can be known. I hope the media will respect my request not to be asked to comment further until the investigation s concluded. All of us should afford the government the opportunity o complete its investigation without undue publicity.

Statement of Judge Walter L. Nixon, Jr.
Issued by
William F. Goodman, Jr.
Watkins & Eager
Jackson, MS

at Hattiesburg
July 19, 1984 1:00 p.m.

COMMITTEE EXHIBIT NO. 25

SOUTHERN DISTRICT OF MISSISSIPPI
**FILED**
APR 06 1984
CLERK
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA

VS.

WILEY FAIRCHILD

CRIMINAL NO. H84-00009
Violations: 18 U.S.C. §201(f)
(gratuity)
18 U.S.C. §1623
(perjury)

The Grand Jury charges:

COUNT 1

1. At all times material to this Indictment:

   a. Wiley Fairchild was a businessman living in Hattiesburg, Mississippi.

   b. Walter Nixon was a United States District Court Judge in the Southern District of Mississippi.

2. On or about February 25, 1981, the exact date being unknown to the grand jury, in Forrest County in the Hattiesburg Division of the Southern District of Mississippi, the defendant WILEY FAIRCHILD unlawfully and knowingly did, directly and indirectly, give and offer things of value to United States District Court Judge Walter Nixon otherwise than as provided by law for the proper discharge of Judge Nixon's official duties; to wit, mineral royalty interests in three wells, for and because of official acts to be performed by Judge Nixon in the future in matters of interest to the defendant WILEY FAIRCHILD.

In violation of Title 18, United States Code, Section 201(f).

## COUNT II

1. Paragraph one of Count One of the Indictment is hereby realleged and incorporated as if set forth in full herein.

2. On or about July 18, 1984, in Forrest County in the Hattiesburg Division of the Southern District of Mississippi, the defendant WILEY FAIRCHILD, having duly taken an oath that he would testify truthfully in proceedings before a grand jury of the United States, did knowingly and contrary to said oath make false material declarations as hereinafter set forth.

3. At the time and place set forth in paragraph two, the Grand Jury of the United States District Court for the Southern District of Mississippi was conducting an investigation into the circumstances of the transfer of mineral royalty interests from the defendant WILEY FAIRCHILD, to Judge Nixon.

4. It was material to the grand jury's investigation described in paragraph three to determine the manner in which the transfer of the mineral royalty interests to Judge Nixon was effected by the defendant WILEY FAIRCHILD.

5. It was material to the grand jury's investigation described in paragraph three to determine if the defendant WILEY FAIRCHILD handled the mineral royalty interests in a manner not consistent with his normal course of business, and if the defendant WILEY FAIRCHILD attempted to conceal from his employees the nature of the transfer of mineral royalty interests and the identity of Judge Nixon as the recipient of the interests.

6. At the time and place set forth in paragraph two, the defendant WILEY FAIRCHILD, appearing as a witness under oath before the grand jury, was asked the following questions and gave the following answers, knowing the underscored material declarations to be false:

Q. Did you make any effort, when this transaction first occurred, to prevent people in your employ from knowing that you were transferring--that these wells were being transferred to Judge Nixon?

A. No, sir.

Q. Did you not--were these deeds not, your instruction, asked to be drawn up in blank and the grantee part such that the person drawing them up would not know who they were for?

A. No, I don't remember nothing like that.

Q. Possible, you don't remember, or it didn't happen?

A. I don't remember it happening. I don't remember it happening. I do remember "Skip" Jarvis saying we better keep this quiet, we better keep it quiet, but that never--

Q. At what point in time was that? Was that when the deeds were drafted?

A. That was sometime, I don't remember.

Q. Well, when you asked these things to originally be drafted did you tell the person that drafted them Walter Nixon was the recipient of the royalty interest?

A. Yeah, yes.

Q. You made no efforts to conceal from anybody the--did you make any efforts to conceal the fact that you were transferring these wells to Walter Nixon and not Joe Blow or not somebody other than Walter Nixon?

A. No, I didn't make any effort.

7. The underscored segments of material declarations made under oath before the grand jury by the defendant WILEY FAIRCHILD, as set forth in paragraph six, as defendant WILEY FAIRCHILD then and there well knew and believed, were false in that the defendant WILEY FAIRCHILD (1) did make efforts to prevent his employees from knowing that he was transferring mineral interests to Judge Nixon; (2) did not tell the person who drafted the deeds that Judge Nixon was the recipient of the royalty interests when the defendant originally asked that the deeds be drafted; and (3) did instruct his staff that the deeds effecting the transfer were to be drawn up with the grantee in blank so as to prevent the disclosure of Judge Nixon as the recipient of the interests.

In violation of Title 18, U.S.C. Section 1623.

A TRUE BILL

Foreman

Date: 9-5-84

REID H. WEINGARTEN

Attorney
U. S. Department of Justice
Public Integrity Section
Criminal Division
P. O. Box 50168
F. Street Station
Washington, D. C. 20004-0168
(202) 724-6974

COMMITTEE EXHIBIT NO. 26

| REPORTING INDIVIDUAL'S NAME (LAST NAME, FIRST, MIDDLE INITIAL) | COURT OR ORGANIZATION | REPORT DATE |
|---|---|---|
| Nixon, Walter L., Jr. | U.S. District Court<br>Southern District of Mississippi | 5 [illegible] |

| POSITION | NEW EMPLOYEES ONLY DATE OF ENTRY ON DUTY | IF REPORT IS FOR A PERIOD OTHER THAN THE CALENDAR YEAR GIVE PERIOD BELOW |
|---|---|---|
| U. S. District Judge | N/A | |

HOME OR OFFICE ADDRESS
[illegible] Iola Road, Ocean Springs, MS 39564

☐ This report includes information for my spouse and dependent children
☐ Information for my spouse and dependent children is submitted on separate forms

The following symbols may be used where applicable: (J) jointly owned by person reporting and spouse; (S) spouse; and (DC) dependent child. See instructions, page 7

DO NOT WRITE IN THIS SPACE

Note: Please read the instructions accompanying this form. Sign this form on the reverse side. Attach additional sheets if needed, identify each attachment by showing your name and the section being continued. Complete all parts. (IF NONE, SO INDICATE). Please type or print clearly.

## I. NON-INVESTMENT INCOME *See Page 6 of Instructions*

| SOURCE (and, for Honoraria only, DATE RECEIVED) | TYPE | AMOUNT |
|---|---|---|
| None ☒ | | |

## II & III. INVESTMENTS AND TRUSTS: INCOME (II) and VALUE (III)

| Description of Assets including Trust Assets *See Page 7 of Instructions* | II. Income (in excess of $100) *See Page 8 of Instructions* Type of Income | Amount in thousands of dollars: up to 1 | 1- to 2.5 | 2.5- to 5 | 5- to 15 | 15- to 50 | 50- to 100 | 100+ | III. Value *See Page 9 of Instructions* Valuation Method | Value in thousands of dollars: 1- to 5 | 5- to 15 | 15- to 50 | 50- to 100 | 100- to 250 | 250+ |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| None ☐ | | | | | | | | | | | | | | | |
| Professional Drug Company | Div. | | | x | | | | | G | | | | x | | |
| Peoples Bank of Biloxi | Div. | x | | | | | | | G | | x | | | | |
| Nixon Enterprises, Inc. | | | | | | | | | C | | | | x | | |
| Gutierrez & Nixon (Partnership) | | | | | | | | | D | | x | | | | |
| W. A. Wiltshire (Note) | Int. | | x | | | | | | F | | | x | | | |
| Franklin Life Ins. Co. | Int. | x | | | | | | | F | | | x | | | |
| First Miss Corp. | C.G. | x | | | | | | | Sold | | | | | | |
| First State Bank & Trust | C.G. | | | | | x | | | Sold | | | | | | |
| Jackson Savings & Loan | C.G. | | x | | | | | | Sold | | | | | | |
| Metropolitan National Bank | C.G. | x | | | | | | | Sold | | | | | | |

[illegible]

| SOURCE | DESCRIPTION |
|---|---|
| None ☒ | |

B. Other Gifts See Page 11 of Instructions

| | | VALUE |
|---|---|---|
| None ☒ | | |

V. REIMBURSEMENTS See Page 11 of Instructions

| SOURCE | DESCRIPTION |
|---|---|
| None ☒ | |

VI. LIABILITIES See Page 11 of Instructions

| DESCRIPTION (include identity of Payee or Creditor) | Amount in thousands of dollars | | | | |
|---|---|---|---|---|---|
| | 10+ to 15 | 15+ to 50 | 50+ to 100 | 100+ to 250 | 250+ |
| None ☐ | | | | | |
| The Mississippi Bank - Promissory Notes | | x | | | |
| Metropolitan National Bank - Promissory Notes | x | | | | |

VII. TRANSACTIONS See Page 11 & 12 of Instructions

| DESCRIPTION | DATE | SALE | PURCHASE | EXCHANGE | Value in thousands of dollars | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | 1+ to 5 | 5+ to 15 | 15+ to 50 | 50+ to 100 | 100+ to 250 | 250+ |
| None ☐ | | | | | | | | | | |
| Stock - First State Bank & Trust Company of Gulfport | 5/5/80 | x | | | | | | x | | |
| Stock - Jackson Savings & Loan Assn. | 2/15/80 | x | | | | x | | | | |
| Stock - Metropolitan National Bank | 9/3/80 | x | | | | x | | | | |

VIII. POSITIONS See Page 12 of Instructions

| POSITION | NAME OF ORGANIZATION |
|---|---|
| None ☒ | |

IX. AGREEMENTS See Page 12 of Instructions

| DATES | PARTIES | TERMS |
|---|---|---|
| None ☒ | | |

NOTE: Any individual who knowingly and willfully falsifies, or who knowingly and willfully fails to file this report may be subject to civil & criminal sanctions (28 U.S.C.A. App. 1, §304 & 18 U.S.C. §1001)

SIGNATURE I certify that all information given above is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory conditions permitting non-disclosure.

Walter L. Nixon Jr. DATE 5/8/81

MAILING THIS FORM

Judicial Officers and Employees mail original and one copy of this form to
Judge Edward A. Tamm
Judicial Ethics Committee
United States Courthouse
3rd & Constitution Ave., N.W.
Washington, D.C. 20001

Deliver one copy to the Clerk of the Court on which you sit or serve. Judicial Employees not associated with a specific court, such as employees of the Administrative Office and the Federal Judicial Center need not file a copy with any Clerk.

Charles P. Logan Certified Public Accountant

309 HATTEN BUILDING
GULFPORT, MISSISSIPPI 39501
601-863-2551

June 25, 1982

Hon. Walter L. Nixon, Jr.
U. S. District Judge
P. O. Drawer A
Biloxi, MS 39530

RE: Annual Financial Disclosure Report

Dear Judge Nixon:

I am enclosing herewith four copies of your Amended FINANCIAL DISCLOSURE REPORT for the calendar year 1981.

The reports should be signed and dated by you on Page 4. Two copies of the report should be mailed to the Judicial Ethics Committee. This address appears on Page 4 of the report. One copy should be delivered to the Clerk of Court for the Southern District of Mississippi.

Yours truly,

Charles P. Logan
CHARLES P. LOGAN
Certified Public Accountant

Enclosure

DEFENDANT'S EXHIBIT 42

FINANCIAL DISCLOSURE REPORT — CERTAIN JUDICIAL EMPLOYEES PER 28 USCA App. 1 § 301 et seq.

| | | |
|---|---|---|
| PERSON REPORTING (LAST NAME, FIRST, MIDDLE INITIAL)<br>Nixon, Walter L., Jr. | COURT OR ORGANIZATION<br>U. S. District Court<br>Southern District of Miss. | REPORT DUE DATE<br>5-15-8 |
| TITLE<br>U. S. District Judge | IF YOU ASSUMED OFFICE DURING THE PAST YEAR, STATE THE DATE OF ENTRY ON DUTY | If Report is for Period other than Calendar Yr. Give Period Below |
| HOME OR OFFICE ADDRESS<br>1204 Iola Road, Ocean Springs, MS 39564 | | |
| ☒ This report includes information pertaining to my spouse and dependent children, if any. The following symbols may be used where applicable: (J) jointly owned by person reporting and spouse, (S) spouse, and (DC) dependent child. See instructions, page 5 | | DO NOT WRITE IN THIS SPACE |

*Please read the instructions accompanying this form. Sign this form on the reverse side. Attach additional sheets if neces identifying each attachment by showing your name and the section being continued. Complete all parts. Check the NONE box when you have no information to report. Please type or print clearly.*

**I. NON-INVESTMENT INCOME** *See Page 7 of instructions.*

| | SOURCE (and, for Honoraria only, DATE RECEIVED) | TYPE | AMOUNT (yours, not spouse's) |
|---|---|---|---|
| None ☐ | Back Judicial Wages (Will v. U.S.) | Back Wages | 10,010 |

**II. & III. INVESTMENTS AND TRUSTS: INCOME (II) and VALUE (III)**

| DESCRIPTION OF ASSETS INCLUDING TRUST ASSETS *See Page 8 of Instructions* | II. Income *(in excess of $100) See Page 11 of Instructions* Type of Income | Income in thousands of dollars (check appropriate block) up to 1 | 1 to 2.5 | 2.5 to 5 | 5 to 15 | 15 to 50 | 50 to 100 | 100 - | III. Value *See Page 11 of Instructions* Valuation Method Use Alphabetical Code | Value in thousands of dollars (check appropriate block) 1- to 5 | 5- to 15 | 15- to 50 | 50- to 100 | 100- to 250 | 250- |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| None ☐ Professional Drug Company | Div | | | X | | | | | G | | | | X | | |
| Peoples Bank of Biloxi | NONE | | | | | | | | G | | X | | | | |
| Nixon Enterprises, Inc. | NONE | | | | | | | | E | | | | | X | |
| Gutierrez & Nixon - Partnership | NONE | | | | | | | | D | | X | | | | |
| U.S. Treasury Notes | Int. | X | | | | | | | Sold | X | | | | | |
| Franklin Life Insurance Co. | Int. | X | | | | | | | F | | X | | | | |
| First Ms. National Bank Checking Acct. | NONE | | | | | | | | C | | X | | | | |
| Oil & Gas Royalty Interest | | | | | | | | | | | | | | | |
| 1. W.R. Fairchild Const. Co. LTD | NONE | | | | | | | | A | | X | | | | |
| 2. Geosouthern Energy Corp. | NONE | | | | | | | | A | | X | | | | |
| 3. Robert A. Stockett, Jr. | NONE | | | | | | | | A | | X | | | | |
| 4. Pattison Petroleum Corp. | NONE | | | | | | | | A | | X | | | | |

| DESCRIPTION OF ASSETS INCLUDING TRUST ASSETS<br>*See Page 8 of Instructions* | II Income<br>*(in excess of $100)*<br>*See Page 11 of Instructions* | | | | | | | | III Value<br>*See Page 11 of Instructions* | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Type of income | Income in thousands of dollars (check appropriate block) | | | | | | | Valuation Method | Value in thousands of dollars (check appropriate block) | | | | |
| | | up to 1 | 1- to 2.5 | 2.5- to 5 | 5- to 15 | 15- to 100 | 50- to 100 | 100 + | Use Alphabetical Code | 1- to 5 | 5- to 15 | 15- to 50 | 50- to 100 | 100- to 250 | 250+ |
| | | | | | | | | | | | | | | | |
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[illegible] Nixon, Walter L. Jr.

**IV. GIFTS** *None* ☒

A Gifts of transportation, lodging, food, or entertainment. *See Page 13 of Instructions.*

| SOURCE | DESCRIPTION |
|---|---|
| | |
| | |
| | |

B Other Gifts *See Page 14 of Instructions.*

| | | VALUE |
|---|---|---|
| | | |
| | | |
| | | |

**V. REIMBURSEMENT** *See Page 14 of Instructions.*

| SOURCE | DESCRIPTION |
|---|---|
| *None* ☒ | |
| | |
| | |
| | |

**VI. LIABILITIES** *See Page 14 of Instructions.*

| DESCRIPTION *(include identity of Payee or Creditor)* | Amount in thousands of dollars | | | |
|---|---|---|---|---|
| *None* ☐ | 10- to 15 | 15- to 50 | 100- to 250 | [illegible] |
| The Mississippi Bank - Promissory Notes | | X | | |
| First Mississippi National Bank - Promissory Notes | | X | | |
| Nixon Enterprises, Inc. - Promissory Note | | X | | |
| Fairchild Construction Company - Promissory Note | X | | | |

**VII. TRANSACTIONS** *See Page 15 & 16 of Instructions.*

| DESCRIPTION | DATE | SALE | PURCHASE | EXCHANGE | Value in thousands of dollars | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| *None* ☐ | | | | | 1- to 5 | 5- to 15 | 15- to 50 | 50- to 100 | 100- | [illegible] |
| U. S. Treasury Notes | 4-15-81 | | X | | X | | | | | |
| U. S. Treasury Notes | 11-30-81 | X | | | X | | | | | |
| Overriding Royalty Interest | | | | | | | | | | |
| W.R. Fairchild Const. Co. LTD - Leasee | 2-25-81 | | X | | | X | | | | |
| Oil & Gas Working Interest | | | | | | | | | | |
| Geosouthern Energy Corp. - Leasee | 11-06-81 | | X | | | X | | | | |
| Oil & Gas Royalty Interest | | | | | | | | | | |
| Robert A. Stockett, Jr. - Leasee | 2-26-81 | | X | | | X | | | | |
| Oil & Gas Working Interst | | | | | | | | | | |
| Pattison Petroleum Corp. - Leasee | 5-08-81 | | X | | | X | | | | |
| | | | | | | | | | | |
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| | | | | | | | | | | |

VIII POSITIONS *See Page 16 of Instructions.*

| POSITION | NAME OF ORGANIZATION |
|---|---|
| *None* ☒ | |

IX. AGREEMENTS *See Page 17 of Instructions*

| DATES | PARTIES | TERMS |
|---|---|---|
| *None* ☒ | | |

In accordance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not participate in any litigation during the period covered by this report in which I, my spouse, or dependent child or children had a financial interest in the outcome of such litigation.

I certify that all information given above is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

ATURE Walter L. Nixon Jr. DATE June 28, 1982

NOTE Any individual who knowingly and willfully falsifies, or who knowingly and willfully fails to file this report may be subject to civil and criminal sanctions (28 U.S.C.A. App. 1, § 304 and 18 U.S.C. § 1001)

MAILING
THIS FORM

*Judicial Officers and Employees mail original and one copy of this form to*

**Judge Edward A. Tamm**
**Judicial Ethics Committee**
**United States Courthouse**
**3rd & Constitution Ave., N.W.**
**Washington, D.C. 20001**

Deliver one copy to the Clerk of the Court on which you sit or serve.

Judicial Employees not associated with a specific court, such as employees of the Administrative Office and the Federal Judicial Center need not file a copy with any Clerk.

PERSON REPORTING (LAST NAME, FIRST, MIDDLE INITIAL)
Nixon, Walter L., Jr.

COURT OR ORGANIZATION
U. S. District Court
Southern District of Miss

REPORT DUE DATE
5/15/83

TITLE
ief U. S. District Judge

IF YOU ASSUMED OFFICE DURING THE PAST YEAR, STATE THE DATE OF ENTRY ON DUTY

If Report is for Period other than Calendar Year Give Period Below

OR OFFICE ADDRESS
1204 Iola Road
Ocean Springs, Mississippi 39564

**IMPORTANT NOTE:** *Please read the instructions accompanying this form. The report is designed for and should include information pertaining to your spouse and dependent children, if any. Attach additional sheets if needed, identifying each attachment by showing your name and the section being continued. Complete all parts. Check the NONE box when you have no information to report. Please type or print clearly. Sign this form on the reverse side.*

DEFENDANT'S EXHIBIT
41

**I. NON-INVESTMENT INCOME** *See Page 7 of instructions.*

| SOURCE (and, for Honoraria only, DATE RECEIVED) | TYPE | AMOUNT (yours, not spouse's) |
|---|---|---|
| None ☒ | | |

**II. & III. INVESTMENTS AND TRUSTS: INCOME (II) and VALUE (III)**

| DESCRIPTION OF ASSETS INCLUDING TRUST ASSETS *See Page 8 of Instructions.* | II. Income (in excess of $100) *See Page 11 of Instructions.* Type of Income | Income in thousands of dollars (check appropriate block) up to 1 | 1- to 2.5 | 2.5- to 5 | 5- to 15 | 15- to 50 | 50- to 100 | 100+ | III. Value *See Page 11 of Instructions.* Valuation Method Use Alphabetical Code | Value in thousands of dollars (check appropriate block) 1- to 5 | 5- to 15 | 15- to 50 | 50- to 100 | 100- to 250 | [illegible] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| None ☐ | | | | | | | | | | | | | | | |
| rofessional Drug Company | Div | | x | | | | | | G | | | | x | | |
| eoples Bank of Biloxi | Div | x | | | | | | | G | | x | | | | |
| ixon Enterprises, Inc. | NONE | | | | | | | | E | | | | | x | |
| utierrez & Nixon - Partnership | NONE | | | | | | | | D | | x | | | | |
| ranklin Life Ins. Co. | Int | x | | | | | | | F | | x | | | | |
| il & Gas Royalty Interest: | | | | | | | | | | | | | | | |
| 1. W. R. Fairchild Const. Co., Ltd. | Roy | | | | | x | | | A | | x | | | | |
| 2. GeoSouthern Energy Corp. | Roy | | | | x | | | | SOLD | | | | | | |
| 3 Pattison Petroleum Corp. | Roy | | | | x | | | | A | | x | | | | |
| lobert A. Stockett, Jr. (lessee)<br>(Pointe Coupee Parish, LA) | NONE | | | | | | | | A | | x | | | | |
| 5. Fairchild-Windham Exploration | Roy | x | | | | | | | A | x | | | | | |
| CONTINUED NEXT PAGE) | | | | | | | | | | | | | | | |

| DESCRIPTION OF ASSETS INCLUDING TRUST ASSETS See Page 8 of Instructions | Type of Income | Income in thousands of dollars (check appropriate block) See Page 11 of Instructions | | | | | | | Valuation Method See Page 11 of Instructions | Value in thousands of dollars (check appropriate block) | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | up to 1 | 1- to 2.5 | 2.5- to 5 | 5- to 15 | 15- to 50 | 50- to 100 | 100+ | Use Appropriate Code | 1- to 5 | 5- to 15 | 15- to 50 | 50- to 100 | 100- to 250 | 250+ |
| st Mississippi National Bank (checking account) | NONE | | | | | | | | C | x | | | | | |
| First Mississippi National Bank (IRAs) | NONE | | | | | | | | C | x | | | | | |
| The Peoples Bank of Biloxi (checking account) | NONE | | | | | | | | C | | | x | | | |
| ~~Commonwealth Bank (money market certificate)~~ | ~~NONE~~ | | | | | | | | ~~C~~ | | ~~x~~ | | | | |

[illegible]

## IV GIFTS *None* ☒

A Gifts of transportation lodging food or entertainment *See Page 13 of Instructions*

| SOURCE | DESCRIPTION |
|---|---|
| | |
| | |
| | |

B Other Gifts *See Page 14 of Instructions*

| | | VALUE |
|---|---|---|
| | | |
| | | |
| | | |

## V. REIMBURSEMENTS *See Page 14 of Instructions*

| SOURCE | DESCRIPTION |
|---|---|
| *None* ☒ | |
| | |
| | |
| | |

## VI. LIABILITIES *See Page 14 of Instructions*

| DESCRIPTION *(include identity of Payee or Creditor)* | Amount in thousands of dollars | | | | |
|---|---|---|---|---|---|
| | 10+ to 15 | 15+ to 50 | 50+ to 100 | 100+ to 250 | 250+ |
| *None* ☐ | | | | | |
| The Mississippi Bank -- Promissory Note | | | | x | |
| Nixon Enterprises, Inc. -- Promissory Note | | x | | | |
| | | | | | |
| | | | | | |

## VII. TRANSACTIONS

*See Page 15 of Instructions*

| DESCRIPTION *(include identity of Other Party where applicable)* | DATE | SALE | PURCHASE | EXCHANGE | Value of Transactions in thousands of dollars *(check appropriate block)* | | | | | | Capital Gains in thousands of dollars *(check appropriate block)* | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | 1+ to 5 | 5+ to 15 | 15+ to 50 | 50+ to 100 | 100+ to 250 | 250+ | None | up to 1 | 1+ to 2.5 | 2.5+ to 5 | 5+ to 15 | 15+ to 50 | 50+ to 100 |
| *None* ☐ | | | | | | | | | | | | | | | | | |
| GeoSouthern Energy Corp. | 11/10 | x | | | | x | | | | | x | | | | | | |
| | | | | | | | | | | | | | | | | | |
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VIII. POSITIONS *See Page 16 of Instructions*

| POSITION | NAME OF ORGANIZATION |
|---|---|
| None ☐ | |
| Partner | Gutierrez & Nixon |
| Sole stockholder | Nixon Enterprises, Inc. |

IX. **AGREEMENTS** *See Page 17 of Instructions*

| DATES | PARTIES | TERMS |
|---|---|---|
| None ☒ | | |

In accordance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not participate in any litigation during the period covered by this report in which I, my spouse, or dependent child or children had a financial interest in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

SIGNATURE Walter L. Nixon Jr. DATE May 10, 1983

*NOTE* Any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file this report may be subject to civil and criminal sanctions (28 U.S.C.A. App. 1, § 304 and 18 U.S.C. § 1001)

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MAILING
THIS FORM

*Judicial Officers and Employees mail original and one copy of this form to*

Judge Edward A. Tamm
Judicial Ethics Committee
United States Courthouse
3rd & Constitution Ave., N.W.
Washington, D.C. 20001

Deliver one copy to the Clerk of the Court on which you sit or serve

*Judicial Employees* not associated with a specific court, such as employees of the Administrative Office and the Federal Judicial Center need not file a copy with any Clerk

COMMITTEE EXHIBIT NO. 27

# Honorable Walter L. and Barbara C. Nixon

# PERSONAL FINANCIAL STATEMENT

December 31, 1982

MOORE & POWELL
CERTIFIED PUBLIC ACCOUNTANTS

CHARLES L. MOORE, C.P.A. [illegible]
SANDFORD E. POWELL, C.P.A. [illegible]
VERNON [illegible] C.P.A.
THOMAS E. [illegible] C.P.A.
STEPHEN M. STEWART C.P.A.
CHRISTOPHER L. ANZALONE C.P.A.
ROBERT L. PARKER C.P.A.
STEVEN A. WAGES C.P.A.

RITA E. TOLLISON C.P.A.
JOHN WHITE C.P.A.
CYNTHIA G. SHAW C.P.A.
MARY L. MANN C.P.A.
STEVEN [illegible] C.P.A.

MEMBER
AMERICAN INSTITUTE OF CPAs
MISSISSIPPI SOCIETY OF CPAs

TELEPHONE [illegible]
P.O. DRAWER N — 1102 WEST HOWARD
BILOXI, MISSISSIPPI 39533

TELEPHONE [illegible]
P.O. BOX [illegible] — [illegible] MAIN STREET
BAY ST. LOUIS, MISSISSIPPI [illegible]

TELEPHONE [illegible]
P.O. BOX [illegible] — [illegible] EAST CANAL
PICAYUNE, MISSISSIPPI [illegible]

February 18, 1983

Hon. Walter L. and Barbara C. Nixon
P.O. Drawer A
Biloxi, MS 39533

We have compiled the accompanying personal financial statement with related schedules of Walter L. and Barbara C. Nixon as of December 31, 1982 in the accompanying prescribed form in accordance with standards established by the American Institute of Certified Public Accountants.

The financial statement and related disclosures are presented in accordance with the requirements of the Federal Reserve Bank of Atlanta which differ from generally accepted accounting principles when this form is applied to an individual. Accordingly, the financial statement is not designed for those who are not informed about such differences.

Our compilation was limited to presenting in the form prescribed by the Federal Reserve Bank information that is the representation of the owners. We have not audited or reviewed the financial statements referred to above and, accordingly, do not express an opinion or any other form of assurance on them. However, we did become aware of a departure from the requirements of the prescribed form as described in the following paragraph.

The individuals represented have elected to present the values in the accompanying statement at estimated market values, in an attempt to reflect current net worth. Generally accepted accounting principles require personal financial statements be shown in a two column format with one column representing cost, the other market. Among the disclosures required are notes explaining the basic assumptions used to formulate the statements; an estimate of the income tax liability that would result from disposition of assets at market value; and an estimate of any additional income taxes that may be owed for the current year. If the omitted disclosures were included in the financial statement, they might influence the user's conclusions about the owner's financial position, accordingly, the financial statement is not designed for those who are not informed about such matters.

Moore & Powell

Supplied by Federal Reserve Bank of Atlanta

Name Walter L. and Barbara C. Nixon

Address P. O. Drawer A, Biloxi, MS 395[illegible]

To The Mississippi Bank

P. O. Box 979, Jackson, MS 392[illegible]

I make the following statement of all my assets and liabilities as of the 31st day of December, 19 8[illegible] and material information for the purpose of obtaining credit with you on notes and bills bearing my signature, endorsement, or guarantee, and agree to notify you promptly of any change affecting my ability to pay

(PLEASE ANSWER ALL QUESTIONS, USING "NO" OR "NONE" WHERE NECESSARY)

| ASSETS | | |
|---|---|---|
| 1 Cash On hand, and unrestricted in banks (See Sched. No. 1) | | $ 23,412.38 |
| 2 U. S. Government Securities (Guaranteed) | | -0- |
| 3 Government Agencies Securities | | -0- |
| 4 Accounts and Loans Receivable (See Sched. No. 2) | | -0- |
| 5 Notes Receivable, Not Discounted (See Sched. No. 2) | | -0- |
| 6 Notes Receivable, Discounted With banks, finance companies, etc. (See Sched. No. 2) | | -0- |
| 7 Life Insurance, Cash Surrender Value (Do not deduct loans) (See Sched. No. 3) | | 39,042.00 |
| 8 Stock and Securities Other Than Guaranteed U. S. Gov't and Gov't Agencies (See Sched. No. 4) | | 99,425.00 |
| 9 Real Estate Registered in own name (See Sched. No. 5) | | 322,500.00 |
| 10 Automobiles Registered in own name See list attached. | | 33,350.00 |
| 11 Other Assets (Itemize) See attached list. | | 342,495.46 |
| 12 | | |
| 13 Sub Total | $ 860,224.84 | |
| Less Line No. 31 | $ 136,336.92 | |
| Net Worth (To be shown on line no. 33) | $ 723,887.92 | |
| 16 | | |
| 17 TOTAL ASSETS | | $ 860,224.84 |

| LIABILITIES AND NET WORTH | |
|---|---|
| 18 Notes Payable to Banks, Unsecured Direct borrowings only (See Sched. No. 1) | $ -0- |
| 19 Notes Payable to Banks, Secured Direct borrowings only (See Sched. No. 1) | 100,000.00 |
| 20 Notes Receivable Discounted With banks, finance companies, etc. (See Sched. No. 1) | -0- |
| 21 Notes Payable to Others, Unsecured See Sched 1 | 1,000.00 |
| 22 Notes Payable to Others, Secured | -0- |
| 23 Loans Against Life Insurance (See Sched. No. 3) | 12,649.00 |
| 24 Accounts Payable See attached | 21,269.43 |
| 25 Interest Payable | -0- |
| 26 Taxes and Assessments Payable (See Sched. No. 5) | 1,418.49 |
| 27 Mortgage Payable on Real Estate (See Sched. No. 5) | -0- |
| 28 Brokers Margin Accounts (See Sched. No. 7) | -0- |
| 29 Other Liabilities (Itemize) | -0- |
| 30 | |
| 31 Total Liabilities | 136,336.92 |
| 32 | |
| 33 Net Worth (From line no. 15) | $ 723,887.92 |
| 34 TOTAL LIABILITIES and NET WORTH (Line 31 plus line 33) | $ 860,224.84 |

| SOURCE OF INCOME | |
|---|---|
| Salary | $ 73,100.00 |
| Bonus and commissions | $ -0- |
| Dividends See Schedule #4 | $ 5,736.75 |
| Real Estate income | $ -0- |
| Other income — itemize See Schedule for Item #11 -- Other Assets | $ 50,946.33 |
| TOTAL | $ 129,783.08 |

PERSONAL INFORMATION

Business or occupation Chief U. S. District Judge, Southern District of Miss Age

Partner or officer in any other venture See Schedule for Item #11 — Other Assets

Married X Dependent Children 4

Single Other Dependents 0

| CONTINGENT LIABILITIES | |
|---|---|
| As endorser or co-maker | $ |
| On leases or contracts | $ |
| Legal claims | $ |
| Provision for Federal Income Taxes | $ |
| Other special debt | $ |

GENERAL INFORMATION

Are any assets pledged? Yes

Are you defendant in any suits or legal actions? No

Have you ever made a composition settlement? Explain No

Have you ever taken bankruptcy? Explain No

SUPPLEMENTARY SCHEDULES

No. 1 Banking Relations (A list of all my bank accounts, including savings, and loans)

| Name and Location of Bank | Cash Balance | Amount of Loan | Maturity of Loan | How Endorsed, Guaranteed, or Secured |
|---|---|---|---|---|
| ee attached Schedule #1 | | | | |
| | | | | |
| | | | | |
| | | | | |

See Other Side

No. 2 Accounts, Loans and Notes Receivable (A list of the largest amounts owing to me)

| Name and Address of Debtor | Amount Owing | Age of Debt | Description of Nature of Debt | Description of Security Held | Date Payme Expected |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

No. 3 Life Insurance -- See attached Schedule No. 3

| Name of Person Insured | Name of Beneficiary | Name of Insurance Co. | Type of Policy | Face Amount of Policy | Total Cash Surrender Value | Total Loans Against Policy | Amount of Yearly Premium | Is Polic Assigne |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

No. 4. Stocks and Securities Other Than Guaranteed U. S. Government Securities and Government Agencies.

| Face Value (Bonds) No. of Shares (Stocks) | Description of Security | Registered in Name of | Cost | Present Market Value | Income Received Last Year | To Whom Pledge |
|---|---|---|---|---|---|---|
| See attached Schedule No. 4 | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

5. Real Estate. The legal and equitable title to all the real estate listed in this statement is solely in the name of the undersigned, xcept as follows

| Description or Street No. | Dimensions or Acres | Improvements Consist of | Mortgages or Liens | Due Dates and Amounts of Payments | Assessed Value | Present Market Value | Unpaid Taxe | |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | Year | Amou |
| See attached Schedule No. 5 | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

No. 6 I buy goods principally from: N/A

| Name | Address | Name | Address |
|---|---|---|---|
| | | | |
| | | | |

No. 7. Brokers Margin Accounts. List the names and addresses of the brokers and indicate the net amount due to each:

N/A

No. 8 Insurance Coverage Fire Insurance Buildings $ 286,000 , Automobile(s), Household Effects, etc. $ 130,000
Indicate if policies have extended coverage endorsement Auto policy—yes ; Liability Insurance: Automotive $ 1,6[illegible]
Personal $300,000 , General Public $ ; Other Insurance (describe) Uninsured motorist $1,[illegible]
lision $100 deductible; Medical; Jewelry $30,285; Furs $2,000; Sports Equipment $7,9[illegible]
ate of latest independent analysis of insurance 10/21/82 ; Indicate adequacy of coverage Adequate

The undersigned certifies that each side hereof and the information inserted herein have been carefully read and is true and correct.

Date February 11, 1983
SEE ACCOUNTANTS' COMPILATION REPORT.

Signed Walter F. [illegible] Jr.

## Schedule No. 1 -- Banking Relations

| Name and Location of Bank | Cash Balance | Amount of Loan | Maturity of Loan | How Endorsed, Guaranteed or Secured |
|---|---|---|---|---|
| First Miss. Nat'l Bank<br>Biloxi, Mississippi<br>(checking account) | $ 4,562.34 | | | |
| The Peoples Bank of Biloxi<br>Biloxi, Mississippi<br>(checking account) | 18,850.04 | | | |
| First Miss. Nat'l Bank<br>Biloxi, Mississippi<br>(IRA) (Barbara C. Nixon) | 1,050.00 | | | |
| First Miss. Nat'l Bank<br>Biloxi, Mississippi<br>(IRA) (Walter L. Nixon Jr.) | 175.00 | | | |
| CommonWealth Bank<br>Poplarville, Mississippi<br>(Money Market Certificate) | 10,000.00 | | | |
| W. R. Fairchild<br>Construction Co., Ltd.<br>Hattiesburg, Mississippi | | $ 1,000.00 | 2/25/83 | Promissory note signed by Walter L. Nixon, Jr. (unsecu |
| The Mississippi Bank<br>Jackson, Mississippi | | 100,000.00 | 12/19/87 | Secured by Deed of Trust on Lots 20 and 21, Davidson Hills Subdivision, Jackson County, Mississippi |
| | $34,637.38 | $101,000.00 | | |

*Also see Schedule No. 3 -- Life Insurance

Schedule No. 3 -- Life Insurance

| Name of Person Insured | Name of Beneficiary | Name of Insurance Co. | Type of Policy | Face Amt. of Policy | Total Cash Surrender Value | Total Loans Against Policy | Amt. of Yearly Premiums | Is Policy Assigned? |
|---|---|---|---|---|---|---|---|---|
| Walter L. Jr. | Barbara & Courtney (1/2 each) | FEGLI Program | Group | $68,000 | -0- | -0- | $393.12 | No |
| Walter L. Jr. | Barbara | Metropolitan Life Ins. Co. | 20-yr pay. | 2,500 | $5,930 | $1,070 | 107.04 | No |
| Walter L. Jr. | Walter III | GI Gov't | 30-yr end. | 10,000 | 6,210 | 2,700 | -- | No |
| Walter L. Jr. | Karen | Lamar Life | End. at 85 | 10,000 | 8,770 | 4,056 | 243.40 | No |
| Walter L. Jr. |  | American Nat'l | Paid up | 540 | -0- | -0- |  | No |
| Walter L. Jr. | Walter IV & Courtney (1/2 each) | Franklin Life | Whole life | 20,000 | 7,554 | 3,012 | 517.24 | No |
| Walter L. Jr. | Barbara | Franklin Life | Whole life | 20,000 | 7,058 | 1,811 | 381.40 | No |
| Walter L. Jr. | Barbara | Franklin Life | Whole life + $22,000 3-yr term | 10,000 | 3,520 | -0- | 596.60 | No |
| Barbara C. | Barbara ($10,000)<br>Joseph R.<br>Shelly M.<br>Shaye M.<br>Sherrlee S.<br>Courtney ($2,000 each) | Metropolitan | $10,000 permanent life + $10,000 term | 20,000 | -0- | -0- | 365.80 | No |
|  |  |  |  |  | $39,042 | $12,649 |  |  |

## Schedule No. 4 -- Stocks and Securities Other Than Guaranteed U. S. Government Securities and Government Agencies

| No. of Shares (Stocks) | Description of Security | Cost | Present Market Value | Income Received Last Year |
|---|---|---|---|---|
| 900 | Professional Drug Company (Class A Common) | $1,700 | ) $5.75 per share<br>) for each class<br>) of stock -- | |
| 10,600 | Professional Drug Company (Class B Common) | 3,200 | ) $66,125.00 | $4,932.00 |
| 111 | The Peoples Bank of Biloxi | 3,000 | 33,300.00 | 804.75 |
| | | | $99,425.00 | $5,736.75 |

All the foregoing stocks are registered in the name of Walter L. Nixon, Jr.
None of the foregoing stocks are pledged.

Item No. 10 -- Automobiles

| | |
|---|---|
| 1981 Cadillac DeVille | $11,275.00 |
| 1979 Oldsmobile Cutlass | 5,450.00 |
| 1978 Buick Electra | 6,425.00 |
| 1976 Mercedes Benz | 10,200.00 |
| | $33,350.00 |

## Item No. 11 -- Other Assets

| | |
|---|---|
| Jewelry<br>(See Attachment A) | $30,285.00 |
| Furs<br>(See Attachment A) | 2,000.00 |
| Sports Equipment<br>(See Attachment B) | 7,959.88 |
| Household Furniture | 50,000.00 |
| | $90,244.88 |

### Investments:

1. Interest in net assets of Gutierrez & Nixon Partnership

A summary of the net assets of the partnership as of December 31, 1982, follows:

| | |
|---|---|
| Assets | |
| Land | $18,000 |
| Liabilities | -0- |
| NET ASSETS | $18,000 |
| Interest in net assets | $ 5,974 |

2. Interest in net assets of Nixon Enterprises, Inc.

A summary of the net assets of the corporation as of December 31, 1982, follows:

| | |
|---|---|
| Assets | |
| Cash on hand | $ 1,812.23 |
| Land, Building and Equipment | 225,000.00 |
| Advance to Stockholder | 41,052.00 |
| TOTAL ASSETS | 267,864.23 |
| Liabilities | |
| City and county taxes | 1,785.65 |
| Net Worth, December 31, 1982 | 266,078.58 |
| Less Advance to Stockholder | 41,052.00 |
| INTEREST IN NET ASSETS | $225,026.58 |

*Walter L. Nixon, Jr., owns all the outstanding stock of the corporation, for which his basis is $34,021.

Item No. 11 -- Other Assets (Continued)

Oil, Gas and Mineral Interests

| | |
|---|---|
| 1. W. R. Fairchild Construction Co., Ltd.<br>C. E. Wilkie Gas Unit 28<br>Mobile County, Alabama<br>Royalty Interest -- .0005665 | |
| 2. W. R. Fairchild Construction Co., Ltd.<br>Getty Oil Company Rogers 28-11 Well<br>Marion County, Mississippi<br>Royalty Interest -- .00057595 | |
| Investment in Wilkie #28 and Rogers 28-11: | $ 9,500.00 |
| 3. Fairchild - Windham Exploration<br>L. D. Ross Well<br>Royalty Interest -- .008115785 | |
| Investment: | 4,500.00 |
| 4. Pattison Petroleum Corporation<br>Clemens Well #1<br>Working Interest -- 2.5% | |
| Investment: | 6,250.00 |
| 5. Pointe Coupee Parish, Louisiana | |
| 1.924 royalty acres being an undivided 1/6th of 1/20th of 1/32nd mineral royalty interest affecting 924 acres in: Tract 1: 638.8-acre tract of land in Section 78, Township 4 South, Range 8 East, and Tract 2: 285.12-acre tract of land in Section 79, Township 4 South, Range 8 East. | |
| Investment: | 1,000.00 |
| | $21,250.00 |

| | | |
|---|---|---|
| 1. | 14K yellow gold Scales of Justice stick pin set with one - .3pt diamond...... | |
| 2. | 14K yellow gold hammered gold cuff bracelet .29 DWT ...................... | $145 |
| 3. | Pair of 14K yellow gold hammered gold earrings ........................... | $12 |
| 4. | 14K yellow gold 5/8" wide brick design bracelet ........................... | $11 |
| 5. | 14K yellow gold tube bracelet set with five - .10 pt. diamonds in buttercup settings ................................................... | $90 |
| 6. | 14K yellow gold cluster ring set with 14 diamonds approximately ½ ct....... | $85 |
| 7. | 14K yellow gold cross set with 16 diamonds approximately 2½ cts............ | $25 |
| 8. | Five dollar Indian Head gold coin set in a 14K yellow gold pendant frame with an 18" Byzantine chain .......................................... | $750 |
| 9. | Lady's 14K white gold Longines bracelet watch set with diamonds ........... | $600 |
| 10. | Lady's diamond solitaire set with 1 marquise diamond weighing 1.54 ct. set in a 14K yellow gold 10MM tapered band ...................... | $750 |
| 11. | Lady's 14K yellow gold Longines bracelet watch case #860860/222............ | $200 |
| 12. | Ivory pendant in 18K yellow gold setting ................................. | $500 |
| 13. | Lady's 14K yellow gold heart-shaped pendant set with a 1.10 ct. heart shaped diamond ........................................................ | $500 |
| 14. | Gent's 14K yellow gold Seiko Quartz watch case #7800.8069 ................. | $695 |
| 15. | Gent's Mido Ocean Star watch in white stainless steel case #24681C4. Dial set with 12 diamonds. Attached silver and turquoise band marked Zuni N.W.W.QUAM .................................................... | $850 |
| 16. | Turquoise neck piece contains 22 large nuggets with Bird of Paradise 85 X 45 MM and small hishi beads between nuggets with silver attachments .. | $ |
| 17. | Silver bracelet 35 mm wide with turquoise and coral inlay ................. | $16 |
| 18. | One Gent's 14K white gold square face diamond Angelus watch with mesh band................................................................ | $900 |
| 19. | One 14K yellow gold knot ring with diamond solitaire ...................... | $40 |
| | JEWELRY TOTAL | $[illegible],28 |

FUR SCHEDULE:

| | | |
|---|---|---|
| 1. | One Blue Fox Jacket ....................................................... | $2000.00 |

ATTACHMENT A -- ITEM No. 11 -- OTHER ASSETS

| | | |
|---|---|---|
| 1. | Remington 742 Woodmaster .308 automatic rifle #206077 with | $ 168 |
| 2. | Variable Tesco Scope | 40 |
| 3. | Browning BAR 30.06 Rifle | 344 |
| 4. | #25147 MB 2 x 7 with 4 ply Redfield wide lens scope | 114 |
| 5. | Remington Model 742 Woodmaster .308 auto rifle | 158 |
| 6. | #6963451 with Weaver K4-F scope | 48 |
| 7. | 10 ga. magnum ITHACA shotgun #1 00002406 | 439 |
| 8. | Winchester Super X Model 1 Ducks unlimited Commemorative shotgun #1DU0102 | 1,500 |
| 9. | Hunter Arms Co. "Hunter's Special" .410 gà. double barrel shotgun #167843 | 500 |
| 10. | Browning light 20 ga. over & under shotgun #60173V70<br>Browning Superposed 20 ga. Belgium Mfg. | 1,095 |
| 11. | ITHACA 12 ga. double barrel shotgun #97909 | 300 |
| 12. | Remington 1100 20 ga. auto shotgun #L542161X | 191 |
| 13. | Remington 1100 12 ga. Shotgun #257025V | 191 |
| 14. | Remington 1100 12 ga. quto shotgun #122161V | 191 |
| 15. | 12 ga. Browning 3" magnum "Buck Special" automatic shotgun | 340 |
| 15. | #0V26812 with 1 power Weaver scope | 31 |
| 17. | Remington 12 ga. 3" magnum auto shotgun #470564M | 206 |
| 18. | Remington 1100 12 ga. shotgun #M035044V | 191 |
| 19. | 16 Ga. Browning auto shotgun #90979 | 288 |
| 20. | Light 12 ga. Browning auto shotgun #298174 | 434 |
| 21. | Model 241 Remington 22 Cal. automatic rifle #3522 | 75 |
| 22. | Model 6 Remington Single shot 22 cal. rifle #411913 | 35 |
| 23. | Model 592M Remington Bolt Action 22 Cal. Rifle #1050622 | 72 |
| 24. | Model 57 S & W .41 Magnum Revolver #N134578 | 210 |
| 25. | Colt "Agent" .38 Cal. Snub Nose Revolver #162086 LW | 137 |
| 26. | Colt "Official Police Heavy Barrel" .38 cal. Revolver #632943H | 132 |
| 27. | Charter Arms Undercover .38 Special revolver #259392 | 85 |
| 28. | Remington Model 11 12 ga. auto shotgun #298173 | 125 |
| 29. | Winchester bolt action rifle model 70XTR #G1370231 w/ wide field Redfield scope 2 X 7 | 337 |
| | | $7 959 |

ATTACHMENT B -- ITEM No. 11 -- OTHER ASSETS

## LIABILITIES AND NET WORTH

### Item No. 24 -- Accounts Payable (Itemized)

| | |
|---|---|
| Kenneth A. Ladner Refrigeration, Inc. | $ 1,157.89 |
| Thomas R. Compton Architect | 895.80 |
| Electronic Services | 50.40 |
| Mississippi Security Consultants, Inc. | 22.31 |
| Lighthouse Marble Works | 3,055.50 |
| Mississippi Coast Supply Co., Inc. | 1,864.38 |
| Alex Lindsey & Son Auto Repair | 85.43 |
| MasterCard | 608.73 |
| VISA | 162.00 |
| USAA (auto insurance) | 281.97 |
| Bankston-Collins Insurance Co. | 502.50 |
| Mercy Cross High School Building Fund (pledge) | 300.00 |
| Robert Stockett, Jr. (1981 Cadillac) | 12,150.00 |
| Internal Revenue Service (Household employees quarterly taxes) | 132.52 |
| | $21,269.43 |

SOURCE OF INCOME

Other Income -- Itemize

Royalties from oil, gas and mineral interests:

Amounts shown are amounts received during 1982.

| | |
|---|---|
| C. E. Wilkie Gas Unit 28 and Getty Oil Company Rogers 28-11 Well | $30,431.95 |
| L. D. Ross Well | 17,846.55 |
| Clemens Well #1 | 2,667.83 |
| | $50,946.33 |

(No royalties were received during 1982 from Pointe Coupee Parish, Louisiana, investment.)

COMMITTEE EXHIBIT NO. 28

RHW:JNL:ab
186-41-169

Washington, D.C. 20530

NOV 20 1984

DEFENDANT'S EXHIBIT 24

Barry Hess, Esq.
Hess, Atchison & Horne
301 St. Joseph Street
Post Office Box 1706
Mobile, Alabama 36633

Dear Mr. Hess:

As you know, your client, Wiley Fairchild, made a proffer to the United States in connection with plea negotiations on November 1, 1984. We have evaluated that proffer and we have concluded that Mr. Fairchild is making a good faith effort to cooperate with the Government. If a plea agreement is reached between Mr. Fairchild and the United States consistent with the terms set in New Orleans and memorialized in a separate document (attached hereto), we would expect continuing cooperation from Mr. Fairchild, including complete and truthful testimony before the Grand Jury and at any and all trials that may follow from this investigation. In the event that we conclude (and it would be solely our determination) that such cooperation has been and is forthcoming, we would recommend to the sentencing judge that a prison sentence is not warranted in this case. If we conclude that the cooperation from Mr. Fairchild is not complete in any manner, we would be free, of course, to modify our recommendations. I know you understand as well that the sentencing Judge would not be obliged to follow our recommendations.

Sincerely,

Reid H. Weingarten

Reid H. Weingarten
Trial Attorney
Public Integrity Section
Criminal Division

Enclosure

A TRUE COPY, I HEREBY CERTIFY.
[illegible] CLERK
By:
Deputy Clerk

## Schedule No. 5 -- Real Estate

| Description or Street No. | Dimensions or Acres | Improvements Consist of | Mortgages or Liens | Due Dates/ Amounts of Payments | Assessed Value | Present Market Value | Unpaid Taxes Year | Amount |
|---|---|---|---|---|---|---|---|---|
| Lot 19<br>Davidson Hills<br>Ocean Springs<br>Jackson Co., MS | 75'x184'x<br>132'x167.8' | None | None | | $39,000 | $39,000 | 1982<br>(City Taxes) | $146.1 |
| Lot 20<br>Davidson Hills<br>Ocean Springs<br>Jackson Co., MS | 100'x167.8'x<br>106.3'x204.3' | Storage Building | The Mississippi Bank (lienholder) | 17th each month* | $43,500 | $43,500 | 1982<br>(City Taxes) | $121.6 |
| Lot 21<br>1204 Iola Road<br>Davidson Hills<br>Ocean Springs<br>Jackson Co., MS | 100'x204.3'<br>x100'x207' | Dwelling | The Mississippi Bank (lienholder) | 17th each month<br>$1,053.23* | $210,000 | $210,000 | 1982<br>(County Taxes<br>1982<br>(City Taxes -<br>Lots 21 and 2 | $250.0<br>$298. |
| Lot 22<br>Davidson Hills<br>Ocean Springs<br>Jackson Co., MS | 45.8' 67.3'x<br>207.3'x78'<br>x 211.3' | None | None | | $30,000 | $30,000 | 1982<br>(County Taxes<br>Lots 19, 20, | $102.3 |
| | | | | | $322,500 | | | $1,419.6 |

*$100,000 loan at The Mississippi Bank is secured by Deed of Trust on Lots 20 and 21. Payments on this loan are due 17th of each month in amount of $1,053.23 each. Loan maturity date - 12/19/87.

There are no mortgages on the foregoing property.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIP
Hattiesburg Division

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | ) | |
| | ) | |
| v. | ) | |
| | ) | Crim. No. 84-0009 |
| WILEY FAIRCHILD, | ) | |
| | ) | |
| Defendant | ) | |

## PLEA AGREEMENT

1. The defendant, WILEY FAIRCHILD, will plead guilty to Count I of the indictment (gratuity).

2. The United States will move to dismiss Count II of the indictment (perjury).

3. The United States will make known to the sentencing court any and all cooperation that Wiley Fairchild provides.

4. The United States retains the right to allocute at sentencing.

5. Wiley Fairchild will not be prosecuted by the United States for any offense the facts of which are now known to the United States.

Reid Weingarten
REID WEINGARTEN
Attorney for the United States

BARRY HESS
Attorney for the Defendant

JAN NIELSEN LITTLE
Attorney for the United States

Wallace Gunn
WALLACE GUNN
Attorney for the Defendant

Wiley Fairchild
WILEY FAIRCHILD
Defendant

Dated this 26th day
of November, 1984

A TRUE COPY, I HEREBY
Clarence A. [illegible] CLERK
By:

DEFENDANT'S EXHIBIT

COMMITTEE EXHIBIT NO. 29

Washington D.C. 20530

2/21/85

Joel Blass, Esq.
Post Office Box 160
Gulfport, Mississippi  39502

Dear Mr. Blass:

As you know the Department of Justice has been conducting an investigation of official corruption in the Southern District of Mississippi. In connection with that investigation we have examined the actions of your client, Carroll Ingram, and his involvement in a royalty transfer between Wiley Fairchild and Judge Walter Nixon. Mr. Ingram has testified before the grand jury in this regard.

Based on a comprehensive review of the facts marshalled to date in this investigation, we have no present intention of pursuing any criminal charges against Mr. Ingram and we consider Mr. Ingram to be a fact witness. We request that he reappear before the grand jury on February 22, 1985 with all of the rights and responsibilities that normally inhere to a witness of his status.

Sincerely,

Reid H. Weingarten
Trial Attorney
Public Integrity Section
Criminal Division

COMMITTEE EXHIBIT NO. 30

FILED
MAR 2[illegible] 1985
Marian Brown
CIRCUIT CLERK

Filed by Court
on March 8.
1985 L.W. McK.

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS

CAUSE NUMBER 10,041

REDDITT ANDREW FAIRCHILD

DEFENDANT

# ORDER

ON THIS DAY this Cause came on to be heard upon the Defendant's Motion to Withdraw his Plea of Guilty, for the reason that certain inducements had been made to him in order to affectuate a Plea of Guilty, by prior administration, and the Court after considering the same, finds that the Defendant's Motion is well taken and should be sustained.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the previous Plea of Guilty be Withdrawn and a Plea of Not Guilty be entered.

SO ORDERED AND ADJUDGED on this the 8th day of March, A.D., 1985.

CIRCUIT COURT JUDGE

[redacted]

MAR 08 '79

Marian Brown
CIRCUIT CLERK

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS NO. 10,041

REDDITT ANDREW FAIRCHILD,
Defendant

## MOTION FOR LEAVE TO WITHDRAW PLEA OF GUILTY

NOW COMES the Defendant, Redditt Andrew Fairchild, in the above styled and numbered cause, by and through his Attorney, and moves this Honorable Court for leave to withdraw his plea of guilty and to set aside his previous plea of guilty to the indictment in said Cause, and shows:

That his plea was induced by promises of leniency, that it was not free and voluntary, and for other causes to be shown upon the hearing hereof.

REDDITT ANDREW FAIRCHILD, DEFENDANT

By: Karl W. Kepper
ATTORNEY FOR DEFENDANT

KARL W. KEPPER
P.O. BOX 251
HATTIESBURG, MS 39401
(601) 583-8204

## CERTIFICATE OF SERVICE

This is to certify that I have this day served Honorable Glen White, District Attorney for the Twelfth Circuit Court District with a copy of the foregoing Motion by hand delivering same to him.

This, the 7th day of March, A.D., 1985.

Karl W. Kepper

ATTORNEY

KEPPER & KEPPER
ATTORNEYS AT LAW
Karl W. Kepper
P.O. Box 251
Hattiesburg, MS 39401
(601) 583-8204

COMMITTEE EXHIBIT NO. 31

FILED
MAR 2[illegible] 1985
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
Hattiesburg Division

| | |
|---|---|
| UNITED STATES OF AMERICA | CR. No. H85-00004 |
| v. | Violations 18 U.S.C. §1503 (Obstruction of Justice); |
| PAUL H. "BUD" HOLMES | 18 U.S.C. §1623 (Perjury) |

## INDICTMENT

The Grand Jury charges:

### COUNT I

1. At all times material to this Indictment:

(a) The Defendant, PAUL H. "BUD" HOLMES, was an attorney in Hattiesburg, Mississippi and from January 1980, until January 1984, he served as the District Attorney for Mississippi's 12th District and had his office in Hattiesburg, Mississippi.

(b) Walter Nixon was a United States District Court Judge in the Southern District of Mississippi.

(c) Wiley Fairchild was a businessman living in Hattiesburg, Mississippi.

(d) Drew Fairchild was Wiley Fairchild's son and was implicated in a drug smuggling arrest that occurred at the Hattiesburg airport on August 4, 1980.

2. From July 10, 1984, through March 1985, the federal grand jury empaneled in Forrest County in the Hattiesburg Division of the Southern District of Mississippi was conducting an investigation into allegations of official corruption in the

Southern District of Mississippi and as part of that investigation was examining, among other things, a) the circumstances of the transfer of mineral royalty interests from Wiley Fairchild to Judge Nixon and b) the handling of the smuggling case involving Drew Fairchild by the Defendant, PAUL H. "BUD" HOLMES, then the District Attorney for Mississippi's 12th Judicial District.

3. It was material to the grand jury's investigation to determine whether the Defendant, PAUL H. "BUD" HOLMES, improperly manipulated Drew Fairchild's case as a result of his relationships with Judge Nixon and Wiley Fairchild.

4. It was material to the grand jury's investigation to determine:

(a) whether or not the Defendant, PAUL H. "BUD" HOLMES, discussed the drug case involving Drew Fairchild with Wiley Fairchild;

(b) whether or not the Defendant, PAUL H. "BUD" HOLMES, discussed his handling of the drug case involving Drew Fairchild with Judge Nixon after Judge Nixon received mineral royalty interests from Wiley Fairchild; and

(c) whether or not Judge Nixon discussed the drug case involving Drew Fairchild with Wiley Fairchild after Judge Nixon received mineral royalty interests from Wiley Fairchild.

5. From on or about July 18, 1984, and continuing through March 1985, in the Southern District of Mississippi, the Defendant, PAUL H. "BUD" HOLMES, acting unlawfully, willfully and knowingly, did corruptly influence, obstruct and impede and did endeavor to influence, obstruct and impede the due administration

of justice, in that during the aforesaid period of time the Defendant, PAUL H. "BUD" HOLMES, prevented and endeavored to prevent the grand jury from learning about a telephone call made in the latter part of 1982 from the farm of the Defendant, PAUL H. "BUD" HOLMES, to Wiley Fairchild wherein Judge Nixon and the Defendant, PAUL H. "BUD" HOLMES, assured Wiley Fairchild that his son's drug case would be resolved to Wiley Fairchild's satisfaction by the Defendant, PAUL H. "BUD" HOLMES. In this regard, the Defendant, PAUL H. "BUD" HOLMES:

(a) inquired of others whether they had discussed the aforementioned telephone call with federal authorities so as to be able to tailor his own grand jury testimony;

(b) testified falsely in the grand jury on July 20, 1984, that he had no contact with Wiley Fairchild about the drug smuggling case involving Drew Fairchild after Drew Fairchild was indicted in August 1981;

(c) testified falsely in the grand jury on February 21, 1985 that the reason he did not advise the grand jury about the aforementioned telephone call previously was that "it did not come across my mind . . ." and he "didn't put any significance . . . to it;"

(d) refused to disclose the substance of the aforementioned telephone call when on February 21, 1985, he falsely testified before the grand jury that he could not remember what was said during the call; and

(e) sought to influence a witness, whom he knew was to testify in the grand jury about the aforementioned call, to testify in a way that would be favorable to the Defendant, PAUL H. "BUD" HOLMES;

with all said acts done by the Defendant, PAUL H. "BUD" HOLMES, to manipulate and interfere with the grand jury investigation by preventing the grand jury from receiving relevant evidence.

In violation of Title 18, United States Code, Section 1503.

## COUNT II

1. Paragraphs one through three of Count One of the Indictment are herein realleged and incorporated as if set forth in full herein.

2. On or about July 20, 1984, in Forrest County in the Hattiesburg Division of the Southern District of Mississippi, the Defendant, PAUL H. "BUD" HOLMES, having duly taken an oath that he would testify truthfully in proceedings before a grand jury of the United States, did knowingly and contrary to said oath make false material declarations as hereinafter set forth.

3. It was material to the grand jury's investigation described in paragraph two of Count One to determine whether the Defendant, PAUL H. "BUD" HOLMES, met with Drew Fairchild, soon after the drug arrest at the Hattiesburg airport on August 4, 1980 and while the case was being handled by federal authorities, and sought to

(a) influence the outcome of Drew Fairchild's case; and

(b) find out how much money Drew Fairchild had at his disposal for payments in the case.

4. At the time and place set forth in paragraph two of this Count, the Defendant, PAUL H. "BUD" HOLMES, appearing as a witness under oath before the grand jury, was asked the following questions and gave the following answers, knowing the underscored material declarations to be false:

Q. Did you have a conversation with Drew Fairchild soon after the bust about this subject?

A. Never.

Q. Did Drew come to your office?

A. Yes, sir, after I indicted him.

Q. No, I'm talking about before then.

A. No.

Q. Are you sure?

A. Positive.

Q. Think back. Between the bust and the time you indicted him?

A. No, sir. The reason I say when--because after you and I talked, I have, and kept--be frank, I didn't know it, but we have at the district attorney's office a list-- as a matter of fact I brought the thing with me today-- of everybody that comes to the district attorney's office, a daily, you know, calendar. And I went back and searched it, and he came in there on August the, I believe, 27th of 1981, which was after the indictment. That's the only time I've ever seen him.

Q. Okay. That's your testimony? You didn't--

A. Yes, sir.

Q. Okay.

A. No, sir, he just didn't.

Q. So we're clear--

A. He just didn't. I mean, I don't--

Q. All right. I don't want to-- I'll ask one more time. Between the time of the bust on August 4th and the time he was indicted one year later, did you have occasion to meet with him in your office or outside your office?

A. No, sir. Now, let me say this. I have absolutely no recollection of any meeting with him. Bill Porter was with him somewhere or, you know, I bumped into-- you know, I fly out of the airport all the time out there. I don't recall seeing him out there. I don't recall. The only independent recollection I ever remember of Drew Fairchild was he called, wanted to make an appointment. He came up to my office and I had Katy Madison, who I turned the case over to her for management, meet with him.

Q. That's after the indictment?

A. That's after the indictment. I have no independent recollection whatsoever of ever seeing him before that.

Q. I will ask-- assuming that's your answer, I will ask one more question and see if that jogs your memory.

Did you ever discuss money with Drew Fairchild prior-- money and the smuggling case prior to the indictment?

A. Never.

5. The underscored segments of material declarations made under oath before the grand jury by the Defendant, PAUL H. "BUD" HOLMES, as set forth in paragraph four, as the Defendant, PAUL H. "BUD" HOLMES, then and there well knew, were false in that (1) the Defendant, PAUL H. "BUD" HOLMES, did meet with Drew Fairchild

soon after the drug arrest and before his state indictment and (2) during that meeting the Defendant, PAUL H. "BUD" HOLMES, did ask Drew Fairchild if he had any money for the case.

In violation of Title 18 United States Code, Section 1623.

## COUNT III

1. Paragraphs one through three of Count One of the Indictment are herein realleged and incorporated as if set forth in full herein.

2. On or about September 5, 1984, in Forrest County in the Hattiesburg Division of the Southern District of Mississippi, the Defendant, PAUL H. "BUD" HOLMES, having duly taken an oath that he would testify truthfully in proceedings before a grand jury of the United States, did knowingly and contrary to said oath make false material declarations as hereinafter set forth.

3. It was material to the grand jury's investigation described in paragraph two of Count One to determine whether the Defendant, PAUL H. "BUD" HOLMES, sought to take over Drew Fairchild's case while it was being handled by federal authorities so as to be able to manipulate improperly the outcome of that case.

4. At the time and place set forth in paragraph two of this Count, the Defendant, PAUL H. "BUD" HOLMES, appearing as a witness under oath before the grand jury, was asked the following questions and gave the following answers, knowing the underscored declarations to be false:

Q. . . . Why, in a succint way, but why did you seek the case from the Feds when you did?

A. Why did I "seek" it?

Q. Yes.

A. I never did "seek" it.

Q. Well, you made a telephone call to George Phillips.

A. To ask him what ever happened on it, because he had presented it to my own Grand Jury, you know, "What did you all do?"

In other words, "Did you sentence him, with Watkins, is your C.I., you know, what is the situation on it."

Q. Did you ever reach out specifically and want that case?

A. Oh, no, sir. No, sir. As a matter of fact, with Mr. Fairchild being in Hattiesburg and everything, the last thing you wanted to do was in get into something like that.

5. The underscored segments of material declarations made under oath before the grand jury by the Defendant, PAUL H. "BUD" HOLMES, as set forth in paragraph four, as the Defendant, PAUL H. "BUD" HOLMES, then and there well knew, were false in that the Defendant, PAUL H. "BUD" HOLMES, did reach out and seek to take control of the Drew Fairchild case from the U.S. Attorney's office in Jackson, Mississippi and from the Mississippi Bureau of Narcotics agents who were working with the federal authorities on the Drew Fairchild case.

In violation of Title 18 United States Code, Section §1623.

## COUNT IV

1. Subparagraphs 1(a) and (b) of Count One of the Indictment are herein realleged and incorporated as if set forth in full herein.

2. At all times material to this Indictment Bill Burgin was formerly a member of the Mississippi State Senate who had been indicted in federal court and went to trial with Judge Nixon presiding.

3. On or about February 21, 1985, in Forrest County in the Hattiesburg Division of the Southern District of Mississippi, the Defendant, PAUL H. "BUD" HOLMES, having duly taken an oath that he would testify truthfully in proceedings before a grand jury of the United States, did knowingly and contrary to said oath make false material declarations as hereinafter set forth.

4. At the time and place set forth in paragraph three of this Count, the Grand Jury of the United States District Court for the Southern District of Mississippi was conducting an investigation into allegations of official corruption in the Southern District of Mississippi and was considering whether the Defendant, PAUL H. "BUD" HOLMES, had sought to improperly receive money from litigants who had cases before Judge Nixon.

5. It was material to the grand jury's investigation described in paragraph four of this Count to determine whether the Defendant, PAUL H. "BUD" HOLMES, ever contacted Bill Burgin, then a defendant in a criminal case before Judge Nixon, and had conversations with Burgin about how the Defendant, PAUL H. "BUD" HOLMES, could have Burgin's case "fixed" with the payment of cash to Judge Nixon.

6. It was material to the grand jury investigation described in paragraph four of this Count to determine whether, during conversations between the Defendant, PAUL H. "BUD" HOLMES, and Bill Burgin, the Defendant, PAUL H. "BUD" HOLMES, sought to satisfy Burgin that they could have conversations about illegally "fixing" Burgin's case without being overheard.

7. At the time and place set forth in paragraph three of this Count, the Defendant, PAUL H. "BUD" HOLMES, appearing as a witness under oath before the grand jury, was asked the following questions and gave the following answers, knowing the underscored material declarations to be false:

Q. Are you saying that Bergen [sic] solicited you to commit bribery?

A. In my opinion that's what he was doing.

Q. Did you ever report that?

A. No, sir. He never did come out and say to do this or do that. He'd say something like, "I've got a big damage suit that I want to associate you in and you can make a lot of money. All I want you to do is come down and be around the courthouse and do this and do that during the trial." And so forth.

Q. Well, how would that be effective for him?

A. Pardon?

Q. How would that be effective for him?

A. Just quite frankly, he thought that I could influence the Court. That was his purpose.

Q. And that would be Judge Nixon.

A. Judge Nixon.

Q. Where did these conversations take place?

A. At my office.

Q. Did you ever have conversations with him at your farm?

A. I did.

Q. Did you or he ever express concern that you were being wired?

A. I took him out there -- no, no. I told him, I said, "Bill, -- you see, I knew Bill -- And I said, "Bill, let me give you some advice. From this day forward, you can expect that whoever you talk to is going to be wired. I'm not wired. I just want you to know that right now." I said, "Get ready for the defense." I said, "I want to give you some advice — friendly advice." And then I told him that.

Q. Did you go to any special lengths to prove that you weren't wired?

A. Yes, sir.

Q. What did you do?

A. I took off my clothes.

Q. Why did you feel it was necessary to do that?

A. To be frank with you, I was just trying to make an impression on him.

Q. What would that --

A. I said, "Bill, I just want you to see something." So I took my clothes off and got down to my shorts and I said, "See. You think I'm crazy." But I said, "From this day forward, unless somebody is willing to do that, you just assume that they are wired."

Q. Why was he to assume that his lawyer to be would have been wired?

A. Well, he didn't. I just did it to make an impression.

Q. Isn't it true that you did it because you expected that there were going to be criminal conversations coming?

A. No. No. No. No.

Q. Did you ever indicate to Mr. Bergen [sic] that you would help him, that there would be no fee for you, but that he would have to pay gambling money for Judge Nixon?

A. No, sir.

8. The underscored segments of material declarations made under oath before the grand jury by the Defendant, PAUL H. "BUD" HOLMES, as set forth in paragraph seven of this Count, as the Defendant, PAUL H. "BUD" HOLMES, then and there well knew, were false in that (1) the Defendant, PAUL H. "BUD" HOLMES, had sought to assure Bill Burgin that he was not "wired" so as to make Burgin more receptive to criminal conversations about "fixing" Burgin's case before Judge Nixon; and (2) the Defendant, PAUL H. "BUD" HOLMES, had indicated to Burgin that he could "fix" his case before Judge Nixon by giving Judge Nixon gambling money.

In violation of Title 18 United States Code, Section §1623.

## COUNT V

1. Subparagraphs 1(a) and (b) of Count One of the Indictment are herein realleged and incorporated as if set forth in full herein.

2. On or about February 21, 1985, in Forrest County in the Hattiesburg Division of the Southern District of Mississippi, the Defendant, PAUL H. "BUD" HOLMES, having duly taken an oath that

he would testify truthfully in proceedings before a grand jury of the United States, did knowingly and contrary to said oath make false material declarations as hereinafter set forth.

3. At the time and place set forth in paragraph two of this Count, the Grand Jury of the United States District Court for the Southern District of Mississippi was conducting an investigation into allegations of official corruption in the Southern District of Mississippi and was considering whether or not the Defendant, PAUL H. "BUD" HOLMES, had sought to improperly influence litigants and their attorneys who had cases before Judge Nixon.

4. It was material to the grand jury's investigation described in paragraph three of this Count to determine whether the Defendant, PAUL H. "BUD" HOLMES, ever contacted a lawyer who was litigating a civil lawsuit before Judge Nixon and advised that lawyer that if he engaged in a financial transaction that would be of personal benefit to Judge Nixon he would receive a favorable verdict from Judge Nixon.

5. At the time and place set forth in paragraph two of this Count, the Defendant, PAUL H. "BUD" HOLMES, appearing as a witness under oath before the grand jury, was asked the following questions and gave the following answers, knowing the underscored material declarations to be false:

Q. First let me ask you, do you have any knowledge that Judge Nixon owns a building on the coast in Biloxi or Gulfport?

A. He owns where his law office used to be.

Q. Does he still own that building?

A. I don't know.

Q. Has he ever been desirous of selling that building?

A. Yes, sir. He has.

Q. Have you ever assisted him in selling that building?

A. One time I know that the people that Carroll -- whichever one of the loan companies -- was moving to the Coast and I told him that Judge Nixon had a building that he'd been trying to sell.

Q. Did you ever make any other effort —

A. Not to my knowledge.

Q. -- to assist Judge Nixon?

A. No, sir.

Q. Did you ever contact an attorney with a case before Judge Nixon and encourage him to buy Judge Nixon's building?

A. No, sir.

Q. Did you ever tell an attorney with a civil case -- plaintiff's lawyer — that had a civil case before Judge Nixon that if he bought Judge Nixon's building, that would help him get a larger verdict?

A. No.

Q. Are you sure about that?

A. If you'll name the place and time. I have absolutely no recollection of such a conversation.

Q. Is it fair to say that if you ever made such a statement to a lawyer who had a case before Judge Nixon, that you would remember it?

A. I think I would, unless I said it as a joke, you know, I could have said something in jest or something like that, but I have absolutely no independent recollection of such a statement.

5. The underscored segments of material declarations made under oath before the grand jury by the Defendant, PAUL H. "BUD" HOLMES, as set forth in paragraph four of this count, as the Defendant, PAUL H. "BUD" HOLMES, then and there well knew and believed, were false in that the Defendant, PAUL H. "BUD" HOLMES, (1) did contact attorney Leonard Melvin of Laurel, Mississippi who had a civil lawsuit before Judge Nixon and encouraged Mr. Melvin to buy a building owned by Judge Nixon; and (2) did represent to attorney Leonard Melvin that if he bought Judge Nixon's building such action would help him receive a larger verdict from Judge Nixon in his lawsuit.

In violation of Title 18 United States Code, Section §1623.

A TRUE BILL:

David M. Ward, Jr.
FOREMAN

Reid H Weingarten
REID H. WEINGARTEN

Trial Attorney
Public Integrity Section
Criminal Division
Department of Justice
Washington, D.C. 20530
(202) 724-6974

COMMITTEE EXHIBIT NO. 32

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
Hattiesburg Division

UNITED STATES OF AMERICA )
)
v. )
) CR. No.
REDDITT "DREW" FAIRCHILD, ) H85-00005
)
Defendant. )

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
MAR 29 1985
CLARENCE PIERCE CLERK
BY DEPUTY

## INDICTMENT

THE GRAND JURY CHARGES:

## COUNT ONE

1. From on or about February, 1980 and continuously thereafter up to and including August 4, 1980, in the Southern District of Mississippi and elsewehere, Defendant REDDITT "DREW" FAIRCHILD together with unindicted co-conspirators Robert Royals, Robert L. Watkins, Charles Malone, Malcolm "Duffy" Nathan, Mario Torres, and Kenneth Hatfield, willfully and knowingly did conspire, confederate, and agree together with each other and with others whose names are known and unknown to the Grand Jury, to import marijuana, a Schedule I controlled substance, into the United States from Colombia, South America and other locations outside the United States, contrary to Title 21, United States Code, Section 952(a).

### Means and Methods of the Conspiracy

2. It was a part of the conspiracy that:

(a) Unindicted co-conspirator Robert Watkins, with the help of unindicted co-conspirators Malcolm "Duffy" Nathan and Mario

Torres, would and did agree to pilot planes from the United States to Jamaica and Colombia and back to the United States with loads of marijuana;

(b) Defendant REDDITT "DREW" FAIRCHILD, together with unindicted co-conspirator Robert Royals, agreed to assist in the preparation of drug smuggling planes and the landing and unloading of said planes at the Hattiesburg Municipal Airport;

(c) Defendant REDDITT "DREW" FAIRCHILD and unindicted co-conspirator Charles Malone agreed to make arrangements for the offloading and the storage of the marijuana in or near Hattiesburg, Mississippi; and

(d) Unindicted co-conspirators Charles Malone and Kenneth Hatfield agreed to make arrangements for the sale of marijuana.

## Overt Acts

3. In or about the spring of 1980, Defendant REDDITT "DREW" FAIRCHILD met with unindicted co-conspirators Charles Malone Malcolm "Duffy" Nathan, and Robert L. Watkins, in Hattiesburg, Mississippi to make arrangements for the importation of marijuana into Hattiesburg, Mississippi.

4. In or about the summer of 1980, Defendant REDDITT "DREW" FAIRCHILD made arrangements for the availability of a "stash house" in or near Hattiesburg, Mississippi in which to store marijuana.

5. In or about late July, 1980, unindicted co-conspirator Robert L. Watkins flew an airplane to Colombia, South America, to obtain marijuana.

6. In or about late July or early August, 1980, unindicted co-conspirator Robert Royals was present at the Hattiesburg Municipal Airport and assisted in the preparation and planning for the importation of marijuana into the United States by unindicted co-conspirator Robert L. Watkins.

7. On or about August 1, 1980, Defendant REDDITT "DREW" FAIRCHILD and unindicted co-conspirator Robert Royals drove to the "stash house" and in the course of the trip met with unindicted co-conspirator Charles Malone.

8. On or about the night of August 3, 1980, unindicted co-conspirator Robert Royals was present at the Hattiesburg Municipal Airport waiting for the plane piloted by unindicted co-conspirator Robert L. Watkins to land.

9. On or about the night of August 3, 1980, unindicted co-conspirator Robert Watkins landed an airplane containing approximately 2200 pounds of marijuana at the Hattiesburg Municipal Airport.

In violation of Section 963 of Title 21, United States Code.

A TRUE BILL:

David M. Ward, Jr.
FOREMAN

Reid H Weingarten
REID H. WEINGARTEN

Trial Attorney
Public Integrity Section
Criminal Division
Department of Justice
Washington, D.C. 20530
(202) 724-6974

A TRUE COPY, I HEREBY CERTIFY.
Clarence A. Pierce, CLERK
By:
Deputy Clerk

EXHIBIT NO G-5. EVID
CAUSE NO H85-00012(L)
WITNESS Drew Fairchild
PAGES 4

JAN 28 1986

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
Elouise Scott REPORTER

No. ----------

UNITED STATES DISTRICT COURT

SOUTHERN District of MISSISSIPPI

Hattiesburg Division

THE UNITED STATES OF AMERICA

vs.

PAUL H. "BUD" HOLMES

# INDICTMENT

Violations Charged:

18 U.S.C. §1503
18 U.S.C. §1623

A true bill.

David M. Ward, Jr.

Foreman

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
MAR 25 196[illegible]
CLARENCE PIERCE, CLERK
BY ________ DEPUTY

Filed in open court this ---------- day

of ---------- A.D. 19----

---------- Clerk

Bail, $ ----------

No. ----------

## UNITED STATES DISTRICT COURT

SOUTHERN District of MISSISSIPPI

Hattiesburg Division

THE UNITED STATES OF AMERICA

vs.

REDDITT "DREW" FAIRCHILD

## INDICTMENT

Violation Charged:
21 U.S.C. §963

[illegible] OF MISSISSIPPI
FILED
MAR 29 1985
CLARENCE A. PIERCE, CLERK
BY ____ DEPUTY

A true bill David M. Ward, Sr.
Foreman

Filed in open court this ---------------- day

of ------------ A.D. 19------

---------------------------
Clerk

Bail, $ ------------

GPO 861 526

447

COMMITTEE EXHIBIT NO. 33

June 18, 1985

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
Hattiesburg Division

UNITED STATES OF AMERICA )
)
v. )
) CR No. H85-00004
PAUL H. "BUD" HOLMES, )
)
Defendant. )

## PLEA AGREEMENT

The undersigned have agreed as follows:

1. The Defendant, PAUL H. "BUD" HOLMES, will plead guilty to the crime of contempt, in violation of Title 18, United States Code, Section 401(1).

2. The United States retains the right to allocute at sentencing.

3. The Defendant, PAUL H. "BUD" HOLMES, will provide complete cooperation to the United States; that is, he will provide complete and truthful evidence and testimony to the United States at interviews, before the grand jury, and at trial.

4. The Defendant, PAUL H. "BUD" HOLMES, agrees that any representation he makes during his cooperation can be tested by the United States with a polygraph examination.

5. The United States will make known to the sentencing court any and all cooperation that the Defendant, PAUL H. "BUD" HOLMES, provides.

6. The United States will move to dismiss the indictment pending against the Defendant, PAUL H. "BUD" HOLMES, in the above-captioned case.

7. The Defendant, PAUL H. "BUD" HOLMES, will not be prosecuted by the United States for any offense the facts of which are now known to the United States.

8. The United States retains the right to prosecute the Defendant, PAUL H. "BUD" HOLMES, for perjury with regard to any future testimony given by the Defendant, PAUL H. "BUD" HOLMES.

9. Pursuant to Rule 11(e)(1)(B) PHH RHW of the Federal Rules of Criminal Procedure, the United States and the Defendant, PAUL H. "BUD" HOLMES, agree that should the Court decide to impose a term of imprisonment, a sentence of no more than one year's imprisonment would be an appropriate disposition of the case.

REID H. WEINGARTEN
Attorney for the United States

JAE NIELSEN LITTLE
Attorney for the United States

James K. Dukes
JAMES K. DUKES
Attorney for the Defendant

Maurice Dantin
MAURICE DANTIN
Attorney for the Defendant

ROBERT F. DRAKE
Attorney for the Defendant

Patrick Fanning
PATRICK FANNING
Attorney for the Defendant

PAUL H. "BUD" HOLMES
Defendant

JUNE 18, 1985

A TRUE COPY, I HEREBY CERTIFY,
Clarence A. Pierce, CLERK
By:
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
Hattiesburg Division

SOUTHERN DISTRICT [illegible]
FILED
JUN 18 1985
CLARENCE A. [illegible] CLERK
BY [illegible] DEPUTY

UNITED STATES OF AMERICA )
)
v. ) CR. No. H85-00004
)
PAUL H. "BUD" HOLMES, )
)
Defendant. )

## INFORMATION

The United States of America, acting through its undersigned attorney, charges that:

1. From on or about July 18, 1984, and continuing through March, 1985, in the Southern District of Mississippi, the Defendant, PAUL H. "BUD" HOLMES, acting unlawfully, willfully and knowingly, did commit acts of misbehavior in the presence of the Grand Jury empaneled in the Hattiesburg Division of the Southern District of Mississippi, convened upon the Order of and acting under the supervision of the United States District Court for the Southern District of Mississippi, and did commit acts of misconduct so near to said Grand Jury and said Court as to obstruct the administration of justice. In this regard, the Defendant, PAUL H. "BUD" HOLMES,

(a) inquired of others whether they had discussed a telephone call with federal authorities so as to be able to tailor his own grand jury testimony;

(b) testified falsely in the grand jury on February 21, 1985, that the reason he did not advise the grand jury about the aforementioned telephone call previously was "it did not come across my mind. . ." and he "didn't put any significance to it;" and

(c) refused to disclose the substance of the aforementioned telephone call when on February 21, 1985, he falsely testified before the grand jury that he could not remember what was said during the call;

with all said acts done by the Defendant, PAUL H. "BUD" HOLMES, to manipulate and interfere with the grand jury investigation by preventing the grand jury from receiving relevant evidence.

In violation of Title 18, United States Code, Section 401(1).

Reid H

REID H. WEINGARTEN

Trial Attorney
Public Integrity Section
Criminal Division
Department of Justice
Washington, D.C. 20530

COMMITTEE EXHIBIT NO. 34

[illegible]

JULY TERM 19 85

STATE OF MISSISSIPPI

VERSUS

CAUSE NO. 10,041

REDDITT ANDREW FAIRCHILD, DEFENDANT

ENTRY OF GUILTY PLEA AND JUDGMENT OF COURT

This day into open Court came the District Attorney who prosecutes for the State of Mississippi and came also Redditt Andrew Fairchild, in his own proper person, and represented by counsel, Hon. Barry Hess, Hon. Wallace Gunn and Hon. Kim Chaze, and was lawfully arraigned upon an Indictment lawfully returned by the Grand Jury of Forrest County, Mississippi, charging the said defendant with the crime of Conspiracy and being duly advised of all his Constitutional rights in the premises and being further advised of the consequences of such a plea, the defendant did then and there in open Court enter a plea of guilty to said charge, which plea is accepted by the Court., and Defendant is adjudicated to be guilty of Conspiracy.

Therefore, for said offense and on said plea of guilty, it is by the Court ordered and adjudged that the said Redditt Andrew Fairchild be, and he is hereby, sentenced to serve a term of Three (3) years, at the Mississippi Department of Corrections, and fined $5,000.00 plus costs of Court: the Defendant shall be given credit for any time served in the custody of the United States, pursuant to any custodial sentence imposed by the United States Distrcit Court for the Southern District of Mississippi.

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Defendant, upon his request, is granted leave of the Court to remain released from custody, so that he may make arrangements concerning his personal and business affairs, and he is to surrender himself to the Sheriff of Forrest County, Mississippi, no later than 9:00 A.M., on August 1, 1985, at which time the Sheriff shall see that this judgment is properly executed.

SO ORDERED AND ADJUDGED, on this, the 8th. day of July, A.D., 1985.

CIRCUIT COURT JUDGE

COMMITTEE EXHIBIT NO. 35

GUNN, SCHLESINGER, BUSH & CHAZE
ATTORNEYS AT LAW
1800 WEST HARDY STREET
HATTIESBURG, MISSISSIPPI 39401

WALLACE E GUNN
MILTON A SCHLESINGER
KIM T CHAZE
JOSEPH E BUSH

TELEPHONE
(601) 544-2312
TELEFAX
(601) 544-2313

HAND DELIVERED

July 8, 1985

Honorable Glen White
District Attorney
Forrest County Courthouse
Hattiesburg, Mississippi 39401

RE: State vs. Fairchild

Dear Glen:

Thank you for your time and attention last Friday and Saturday on the above.

Mr. Fairchild will enter a plea of guilty to the indictment today based on my conveying to him the conversation I had with you and Judge McKenzie last Saturday, July 6, 1985.

I am writing this letter to be certain I conveyed this information accurately to Mr. Fairchild. You know I am not ordinarily involved in criminal cases, and I want to avoid any misunderstanding by anyone.

It is understood that Mr. Fairchild will be sentenced to three (3) years imprisonment, $5,000.00 fine and cost of court. Court costs should be approximately Two Thousand Dollars ($2,000.00).

All parties realize Mr. Fairchild is due to be sentenced in Federal Court Thursday, July 11, 1985, for the same marijuana involved in this case, and that he will be given credit on the Mississippi sentence for any sentence imposed by the Federal Court. Mr. Fairchild will be given credit on the custodial/incarceration part of this Mississippi sentence for any incarcerational time imposed by the Federal Judge. It is understood that any custodial time served under the federal sentence will satisfy all requirements of custody and/or incarceration imposed by Judge McKenzie today.

Page Two
Honorable Glen White

It is further understood that the Court, in camera, will place these foregoing statements in the record for protection of all parties.

Please let me know if any of the above is inaccurate before Mr. Fairchild enters his plea. If we are not informed of any inaccuracies, it is understood that the foregoing is an accurate reflection of the plea bargain agreement, and, of course, his guilty plea is based on this understanding.

Again, thank you for your assistance in this matter.

With kindest regards, I am,

Very truly yours,
GUNN, SCHLESINGER, BUSH & CHAZE

BY: Wallace R. Gunn
Wallace R. Gunn

WRG/bd

COMMITTEE EXHIBIT NO. 36

| [illegible] | V. PROCEEDINGS |
|---|---|
| 3-29-85 | Indictment, filed. |
| 3-29-85 | Appearance Bond in the amount of $2,500 (Non-surety) signed on 3-29-85, filed. |
| -29-85 | Grand Jury Return, filed. |
| 3-29-85 | Minute Entry: Deft. appeared 3-29-85 for Rule 5-A Hearing and Arraignment. Deft. waives reading indict. and enters plea of GUILTY. Ct. accepts guilty plea and refers matter to Prob. Dept. for pre-sentence investigation. Bond set at $2,500 personal recognizance, filed. |
| 5-3-85 | Admission Pro Hac Vice - Barry Hess - w/cert. of Good Standing w/cert. of serv., filed. |
| 5-3-85 | Notice of Appear. of Barry Hess as Chief Counsel for deft. w/ cert. of serv., filed. |
| 6-28-85 | Notice of Sentencing on 3-11-85 at 9:00 a.m. in Baton Rouge, LA before JVP, filed. |
| 7-11-85 | JUDGMENT AND PROBATION/COMMITMENT ORDER: Impr. 3 yrs. - Serve 6 Mos. Remainder of sent. susp. - Deft. placed on Prob. for period of 2½ yrs. to comm. upon rel. from conf. Exec. of sent. of impr. is to commence upon defts. self-surrender to the designated institution, filed and entered in C&J Bk. No. 4, Page 210. (JVP)<br>Copies mailed to U. S. Marshal, U. S. Attorney, U. S. Probation Office, Attorney for the Deft. JS 3 Prepared. |
| 7-16-85 | ORDER TO SURRENDER: Deft. ordered to surrender on 8-2-85 at 2:00 p.m. by reporting to the designated facility of the U. S. Bureau of Prisons, filed and entered in OB 1985, Page 2623 through 25 w/ Attachments. (JVP) Copies mailed to Attys. of Record, Marshal and Probation Office. |
| 8-5-85 | Ret. on C & J: Deft. self-surrendered on 7/31/85 to FCI at Tallahassee, FL 32301, filed. |
| 8-6-85 | Deft's Motion for Reduction of Sent. w/cert. of serv., filed. |
| 8-15-85 | Government's Response to Deft's Motion to Reduce Sent. w/ cert. of serv., filed. |
| 10-11-85 | MINUTE ENTRY:<br>Hearing held before CJP on 10-8-85 on Rule 35 Reduction of sent. is denied, filed and entered in OB 1985, Pages 3502-03.(CJP) Copies mailed. |
| 1-10-86 | Transcript of Proceedings held on 7-11-85 with Honorable John V. Parker Presiding (Sentencing Proceedings), filed. |

where you were unable to be positive or you were not certain, it came out that you were not certain of some facts that I'm sure the Government, for example, would have been happy, had you been able to be more certain.

THE DEFENDANT: Yes, sir.

THE COURT: In any event, you did cooperate. You have cooperated, not only in that trial but in other activities. And I certainly must acknowledge that and must be influenced, in the imposition of sentence, by your willing, truthful cooperation --

THE DEFENDANT: Yes, sir.

THE COURT: -- with the Government. I think that it may be encouraging, if you can get your life put together; have a reconciliation with your father. Perhaps some good might come out of all of this. It is, however, even considering all of these circumstances, the opinion of this court that the offense which you have committed mandates a term of custody, of incarceration. And in your case, the case of Redditt "Drew" Fairchild, it is adjudged, Mr. Fairchild, that you are hereby committed to the custody of the Attorney General, or his authorized representative, for incarceration for a term of three years, on condition that you be confined in a jail-type or a treatment-type institution for a period of six months; the execution of the remainder of the sentence of imprisonment is hereby suspended --

COMMITTEE EXHIBIT NO. 37

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
Hattiesburg Division

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | ) | |
| | ) | CR. No. |
| v. | ) | Violations: |
| | ) | 18 U.S.C. §201(g) (Gratuity) |
| WALTER L. NIXON, JR. | ) | 18 U.S.C. §1623 (Perjury) |
| | ) | |

## INDICTMENT

The Grand Jury charges:

### COUNT I

1. At all times material to this Indictment:

(a) The Defendant, WALTER L. NIXON, JR., was a United States District Court Judge in the Southern District of Mississippi.

(b) Wiley Fairchild was a businessman living in Hattiesburg, Mississippi.

(c) Paul H. "Bud" Holmes was an attorney in Hattiesburg, Mississippi and from January 1980 until January 1984, he served as the District Attorney for Mississippi's 12th District and had his office in Hattiesburg, Mississippi.

(d) Drew Fairchild was Wiley Fairchild's son and in August 1981 he was indicted by the State of Mississippi and charged with participating in a drug smuggling conspiracy at the Hattiesburg Airport in August 1980.

(e) Carroll Ingram was an attorney in Hattiesburg, Mississippi and represented Wiley Fairchild.

2. On or about February 25, 1981, the exact date being unknown to the grand jury, in the Southern District of Mississippi, the Defendant, WALTER L. NIXON, JR., unlawfully and knowingly did, directly and indirectly, accept, receive, and agree to receive things of value for himself otherwise than as provided by law for the proper discharge of his official duties; to wit, royalty interests in three wells, from Wiley Fairchild, for and because of official acts to be performed by the Defendant, WALTER L. NIXON, JR., in the future in matters of interest to Wiley Fairchild.

3. As part of said unlawful activity:

(a) The Defendant, WALTER L. NIXON, JR., made an initial request to Carroll Ingram that the Defendant, WALTER L. NIXON, JR., be placed in an oil and gas investment with Wiley Fairchild;

(b) The Defendant, WALTER L. NIXON, JR., subsequent to the initial request referred to in the previous paragraph, frequently and persistently urged Carroll Ingram to see to it that the Defendant WALTER L. NIXON, JR., was placed in an oil and gas investment with Wiley Fairchild;

(c) The Defendant, WALTER L. NIXON, JR., received mineral royalty interests from Wiley Fairchild worth far more than any consideration the Defendant, WALTER L. NIXON, JR., agreed to pay for the interests;

(d) The Defendant, WALTER L. NIXON, JR., knew about and acquiesced in the backdating of the mineral royalty interests so as to make it appear that the Defendant, WALTER L. NIXON, Jr., had received oil and gas interests from Wiley Fairchild one year earlier than he actually had;

(e) The Defendant, WALTER L. NIXON, JR., knew about and acquiesced in the backdating of three promissory notes totalling $9,500 and made payable from the Defendant, WALTER L. NIXON, JR., to Wiley Fairchild so as to make it appear that the Defendant, WALTER L. NIXON, JR., had agreed to pay Wiley Fairchild $9,500 for the mineral royalty interests more than a year earlier than the time when the notes were actually prepared;

(f) The Defendant, WALTER L. NIXON, JR., advised Wiley Fairchild after receiving the mineral royalty interests that he would help Fairchild any time he could;

(g) The Defendant, WALTER L. NIXON, JR., paid off the three promissory notes totalling $9,500 to Wiley Fairchild only after receiving royalty payments of larger amounts from Wiley Fairchild; and

(h) The Defendant, WALTER L. NIXON, JR., to date has received over $60,000 in mineral royalties from still-producing wells given to him by Wiley Fairchild.

In violation of Title 18 United States Code 201(g).

## COUNT II

1. Paragraph One of Count I is herein realleged and incorporated as if set forth in full herein.

2. On or about July 18, 1984, in Forrest County in the Hattiesburg Division of the Southern District of Mississippi, the Defendant, WALTER L. NIXON, JR., having duly taken an oath that he would testify truthfully in proceedings before a duly constituted grand jury of the United States, did knowingly and contrary to said oath make false material declarations as hereinafter set forth.

3. At the time and place set forth in paragraph two, the grand jury of the United States District Court for the Southern District of Mississippi was conducting an investigation into allegations of official corruption in the Southern District of Mississippi and as part of that investigation was examining, among other things, a) the circumstances of the transfer of mineral royalty interests from Wiley Fairchild to the Defendant, WALTER L. NIXON, JR., and b) the handling of the drug smuggling case involving Drew Fairchild by Paul H. "Bud" Holmes, then the District Attorney for Mississippi's 12th Judicial District.

4. It was material to the grand jury's investigation to determine:

(a) Whether or not the Defendant, WALTER L. NIXON, JR., discussed the drug case involving Drew Fairchild with Wiley Fairchild;

(b) Whether or not Wiley Fairchild asked the Defendant, WALTER L. NIXON, JR., to influence the handling of his son's case by interceding on his behalf with Paul H. "Bud" Holmes;

(c) Whether or not the Defendant, WALTER L. NIXON, JR., discussed the drug case involving Drew Fairchild with Paul H. "Bud" Holmes; and

(d) Whether or not the Defendant, WALTER L. NIXON, JR., sought to influence Paul H. "Bud" Holmes' handling of the Drew Fairchild drug case because the Defendant, WALTER L. NIXON, JR., had received mineral royalty interests from Wiley Fairchild.

5. At the time and place set forth in paragraph two, the Defendant, WALTER L. NIXON, JR., appearing as a witness under oath before the grand jury, was asked the following questions and gave the following answers, knowing the underscored material declarations to be false:

Q. Did Wiley Fairchild ever discuss the case with you?

A. No, not to the best of my recollection. I think I would recall that if he had, believe me, but I don't recall that he ever did.

Q. And accepting your answer as you state it, I need to ask the follow-up questions.

A. Very well.

Q. Did Wiley Fairchild ever ask you to do anything vis-a-vis his son's case?

A. Absolutely not.

6. The underscored material declarations made under oath before the grand jury by the Defendant, WALTER L. NIXON, JR., as set forth in paragraph five of this Count, as the Defendant, WALTER L. NIXON, JR., then and there well knew and believed, were false in that (1) the Defendant, WALTER L. NIXON, JR., had discussed Drew Fairchild's drug smuggling case with Wiley Fairchild; (2) the Defendant, WALTER L. NIXON, JR., had recalled those discussions with Wiley Fairchild at the time he testified before the grand jury; and (3) Wiley Fairchild had asked the Defendant, WALTER L. NIXON, JR., to help him with his son's drug case by influencing Paul H. "Bud" Holmes.

In violation of Title 18, United States Code, Section 1623.

## COUNT III

1. Paragraph one of Count I and paragraphs two through four of Count II are herein realleged and incorporated as if set forth in full herein.

2. At the time and place set forth in pargaraph two of Count II, the Defendant, WALTER L. NIXON, JR., appearing as a witness under oath before the grand jury, was asked the following questions and gave the following answers, knowing the underscored material declaration to be false:

> Q. The grand jury has heard evidence that the prosecutor, the state prosecutor, who eventually handled the case was an individual named Bud Holmes. Is he a friend of yours?
>
> A. Very good friend of mine, long time friend, yes.

> Q. Did he ever discuss the Drew Fairchild case with you?
>
> A. No, not to the best of my recollection. I think I would recall if he had.

3. The underscored material declaration made under oath before the grand jury by the Defendant, WALTER L. NIXON, JR., as set forth in paragraph two of this Count, as the Defendant, WALTER L. NIXON, JR., then and there well knew and believed, was false in that Bud Holmes and the Defendant, WALTER L. NIXON, JR., had discussed Drew Fairchild's drug smuggling case.

In violation of Title 18 United States Code, Section 1623.

## COUNT IV

1. Paragraph one of Count I and paragraphs two through four of Count II are herein realleged and incorporated as if set forth in full herein.

2. At the time and place set forth in paragraph two of Count II, the Defendant, WALTER L. NIXON, JR., appearing as a witness under oath before the grand jury, was asked the following question and gave the following response, knowing the underscored material declarations to be false:

> MR. WEINGARTEN:
>
> All right. Judge, do you have anything you want to add?
>
> THE WITNESS:
>
> Yes, I do.
>
> I want to say this. I-- Here (indicating) are your notes too, copies of your instruments, rather.

I came here voluntarily and am very happy to cooperate with this grand jury and give them all the information that I have and that I could. And I have always thought everyone should do that, and that goes for the grand jury over which I'm supervising right now, the other federal grand jury that's sitting at this time. I have nothing at all to-- had nothing to hide or nothing to withhold and I brought everything that you have asked me to bring.

And I want to say this. That I've been told and led to believe and read in the newspaper and heard on the news media, so much about this is an investigation of the Drew Fairchild criminal case. Now, I have had nothing whatsoever officially or unofficially to do with the Drew Fairchild criminal case in federal court or state court. I don't need to reconstruct anything with reference to that. I've told you that from the beginning.

I have never talked to anyone about the case, any federal judge or state judge, federal prosecutor or state prosecutor, and I never handled any aspect of this case in federal court. As you said, Judge Cox handled it. I don't know where-- someone told me maybe Judge Russell handled one of the other defendants also and-- but I never handled any part of it, never had a thing to do with it at all, and never talked to anyone, state or federal, prosecutor or judge, in any way influence anybody with respect to this case. Didn't know anything about it until I read that account in the newspaper. Didn't even know Mr. Fairchild had a son when I was dealing with him in the business transaction.

So I want to say that because I understand that's what this is all about. The investigation is apparently, if the news media is correct, and if I understand it correctly, that's what this is about, the Drew Fairchild criminal case.

3. The underscored material declarations made under oath before the grand jury by the Defendant, WALTER L. NIXON, JR., as

set forth in paragraph two of this Count, as the Defendant, WALTER L. NIXON, JR., then and there well knew, were false in that the Defendant, WALTER L. NIXON, JR., did have something to do with the Drew Fairchild drug case as he had sought to influence the case by asking state prosecutor Paul B. "Bud" Holmes to do what he could for Drew Fairchild and thereby handle the case in a way that would please Wiley Fairchild.

In violation of Title 18, United States Code, Section 1623.

A TRUE BILL:

FOREMAN

REID H. WEINGARTEN

Trial Attorney
Public Integrity Section
Criminal Division
Department of Justice
Washington, D.C. 20530
(202) 724-6974

COMMITTEE EXHIBIT NO. 38

**DEFENDANT** WILEY FAIRCHILD

SOUTHERN DISTRICT OF MISSISSIPPI

DOCKET NO. CR [illegible] H84-00009(L)

# JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

**COUNSEL**

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH DAY YEAR SEPTEMBER 18, 1985

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desires to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL RICHARD D. HORNE (Name of counsel)

**PLEA**

☒ GUILTY, TO COUNT 1 on NOV. 26, 1984 and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

**FINDING & JUDGMENT**

There being a finding/v[illegible] of ☐ NOT GUILTY. Defendant is discharged ☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of TITLE 18 USC 201(f)

INDICTMENT FOR GRATUITY TO A PUBLIC OFFICIAL

**SENTENCE OR PROBATION ORDER**

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Two (2) Years, and fined the sum of $10,000.00. Execution of one year and ten months of the sentence is suspended and the defendant is placed on inactive probation for a period of Three (3) years to commence upon release. The Court recommends that defendant serve the two (2) month sentence at the Half Way House in Jackson, Mississippi. It is further Ordered thatexecution of the sentence is suspended until 2:00 PM, September 23, 1985, at which time the defendant is to report to the designated institution.

**SPECIAL CONDITIONS OF PROBATION**

On motion of counsel for the Government, IT IS ORDERED that the remaining counts are hereby DISMISSED.

**ADDITIONAL CONDITIONS OF PROBATION**

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

**COMMITMENT RECOMMENDATION**

The court orders commitment to the custody of the Attorney General and recommends,

CLERK'S OFFICE
A TRUE COPY
SEP 18 1985

Deputy Clerk U.S. District Court

SIGNED BY ☒ U.S. District Judge

Date SEPT. 18, 1985

C4. J Dl No 4, Page 213.

COMMITTEE EXHIBIT NO. 39

United States of America vs. | United States District Court for

DEFENDANT: PAUL H. "BUB" HOLMES | US EASTERN | SOUTHERN DISTRICT OF MISSISSIPPI

DOCKET NO. ▶ H85-00004

# JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date ▶ MONTH DAY YEAR DECEMBER 11, 1985

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL PATRICK FANNING AND JAMES DUKES (Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged ☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of VIO: 18 USC 401(1)

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary [illegible] was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that [illegible] hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) year and fined the sum of $10,000.00.

IT IS FURTHER ORDERED that pursuant to Title 18 USC, Sec. 3013, special assessment of $50.00 is imposed.

On motion of counsel for the Government, IT IS ORDERED that the original indictment is hereby DISMISSED.

SPECIAL CONDITIONS OF PROBATION

Execution of the sentence is suspended until February 18, 1985 at 3:00 PM, at which time the defendant is to report to the designated institution.

The Court recommends that the defendant be incarcerated at either Maxwell Airforce Base or Eglin Airforce Base. Because defendant is a former law enforcement officer, this Court is to be notified in the event these facilities are not available.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period [illegible] at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant [illegible] probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

CLERK'S OFFICE
[illegible] COPY
DEC 1985
B Perkins

It is ordered that the Clerk deliver a certified copy [illegible] and commitment [illegible] Marshal or other qualified officer.

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

▶ Patrick E. Carr

Ct. J No. 4. R. 221 Date 19 Dec. 11, 1985.

COMMITTEE EXHIBIT NO. 40

**EXHIBIT 40**

TESTIMONY OF JUDGE WALTER L. NIXON. JR

THIS DOCUMENT IS INCLUDED IN THE BINDER OF EXCERPTED TESTIMONY.

COMMITTEE EXHIBIT NO. 41

[illegible], CLERK
BY DEPUTY

UNITED STATES OF AMERICA )
v. )
WALTER L. NIXON, ) Crim. No. 85-00012(L)
Defendant. )

VERDICT

We, the jury, report our verdict in the above-entitled case as follows:

COUNT ONE: RECEIPT OF GRATUITY

18 U.S.C. §201(g)

We, the jury, find the defendant, Walter L. Nixon, Jr.,

Not Guilty

as charged in Count One of the Indictment.

COUNT TWO: PERJURY

18 U.S.C. §1623

We, the jury, find the defendant, Walter L. Nixon, Jr.,

Not guilty

as charged in Count Two of the Indictment.

COUNT THREE: PERJURY

18 U.S.C. §1623

We, the jury, find the defendant, Walter L. Nixon, Jr.,

Guilty

as charged in Count Three of the Indictment.

COUNT FOUR: PERJURY

18 U.S.C. §1623

We, the jury, find the defendant, Walter L. Nixon, Jr.,

Guilty

as charged in Count Four of the Indictment.

SO SAY WE ALL.

Billie S. Dyess
Foreperson

2. 9- 86
Date

COMMITTEE EXHIBIT NO. 42

DEFENDANT WALTER L. NIXON, JR

HATTIESBURG DIVISION

DOCKET NO. → H85-00012(L)

## JUDGMENT AND PROBATION COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date → MARCH 31, 1986

COUNSEL

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Michael S. Fawer and Herbert Larson
(Name of Counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

FINDING & JUDGMENT

There being a ~~finding~~/verdict of ☒ NOT GUILTY. Defendant is discharged as to Counts 1 & 2.
☒ GUILTY. as to Counts 3 & 4.

Defendant has been convicted as charged of the offense(s) of VIO: 18 USC 1623

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS as to and under the charge contained in Count 3 of the indictment; FIVE (5) YEARS as to and under the charge contained in Count 4, such term of imprisonment to run concurrent with Count 3 for an aggregate term of imprisonment of FIVE (5) YEARS.

SPECIAL CONDITIONS OF PROBATION

Defendant released on bond pending appeal.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, [illegible] reverse side of this judgment be imposed. The Court may change the [illegible] at any time during the probation period or within a maximum probation period [illegible] revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and [illegible]

A TRUE COPY, I HEREBY CERTIFY.
Clarence A. Pierce, CLERK
By:
Deputy Clerk

James H. Meredith

March 31, 1966

COMMITTEE EXHIBIT NO. 43

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
APR 14 1986
[illegible] PIERCE, CLERK
BY ______ DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA )
)
vs. ) Criminal No. H85-00012(L)
)
WALTER L. NIXON, JR. )

## MEMORANDUM

By Order dated March 31, 1986, the Court denied defendant's Motion for Judgment of Acquittal or, in the alternative, for a New Trial on Counts III and IV of the Indictment. This Memorandum sets forth the Court's reasoning.

Defendant sought a judgment of acquittal or, in the alternative, a new trial for five separate reasons. In addition, during the evidentiary hearing on defendant's motion, defendant raised an additional argument concerning nondisclosure by the government of a document under Rule 16, F.R.Crim.P. Each argument will be addressed separately.

1. Materiality

Defendant alleges that the Court erred in finding the responses charged as perjurious in Counts III and IV "material" to the grand jury's investigation. The Court finds no merit in this argument.

The foreman of the grand jury testified as to the areas of inquiry and scope of the grand jury's investigation. It was clear from his testimony that the grand jury was investigating whether defendant's financial relationship with

Wiley Fairchild had anything to do with the handling of Drew Fairchild's drug case. Included in the investigation was the relationship between Bud Holmes and defendant and whether that relationship affected handling of Drew Fairchild's case.

The perjurious statements attributed to defendant included his statement that he never discussed Drew Fairchild's case with Bud Holmes (Count III) and his statement that he had "nothing whatsoever officially or unofficially to do with the Drew Fairchild criminal case" and never "in any way influenced anybody with respect to this case" (Count IV). It is clear that these statements were "capable of influencing the grand jury's investigation." United States v. Corbin, 734 F.2d 643, 654 (11th Cir. 1984); United States v. Oberski, 734 F.2d 1034, 1035 (5th Cir. 1984), cert. denied, 105 S.Ct. 797 (1985). The Court rejects defendant's argument that the statements were "factually insignificant"; indeed, these statements go to the heart of what the grand jury was investigating. The Court does not find merit in defendant's other arguments and finds that these statements were material to the investigation.

2. Sufficiency

Defendant's next contention is that the evidence adduced at trial was insufficient to support the jury verdict on Counts III and IV. In deciding this issue, the Court must view the evidence in the light most favorable to the government, United States v. [illegible], 623 F.2d 1017, 1022 (5th Cir. 1980). The Court cannot "assess the credibility of witnesses, weigh the evidence, or substitute its own judgment as to guilt or innocence for that of the jury." United States v. Brown, 587 F.2d 187, 190 (5th Cir. 1979). If the Court is convinced, viewing the evidence most favorably to the government, that the jury "could find that the evidence establishes guilt beyond a reasonable doubt," United States v. Bell, 678 F.2d 547, 549 (5th Cir. 1982)(en banc), aff'd, 462 U.S. 356 (1983), then the Court must deny the motion.

Both the government and defendant have extensively cited to the trial record in arguing sufficiency of the evidence. The Court sees no reason to discuss at length all the testimony adduced at trial. The Court has carefully reviewed the arguments of both sides and the trial record and finds that there was ample evidence from which a jury could find guilt beyond a reasonable doubt on Counts III and IV. Resolving inconsistencies in testimony and judging credibility are matters for the jury. There was sufficient evidence to support the jury's verdict and the Court will not disturb that verdict.

### 2. Taint

Defendant next argues that the presence of Count I "tainted" the perjury counts and improperly influenced the jury by allowing them to consider "improper" evidence. The Court rejects this argument for two reasons. First, nearly all of the evidence pertaining to Count I would have been admissible on the perjury counts. Second, the jury's verdict of acquittal on Counts I and II shows that the jury was able to consider each count separately and was not improperly influenced by the presence of Count I.

The Court notes that defendant made no motion to sever Count I pursuant to Rule 14, F.R.Crim.P. Defendant now argues that the mere presence of the alleged gratuity count prejudiced defendant on the perjury counts. The Court need not decide whether defendant waived this argument by not requesting a severance, *United States* v. *DeLeon*, 641 F.2d 330, 337 (5th Cir. 1981), because the Court believes joinder of these counts was proper.

Joinder is proper when the evidence on one count would be admissible in a trial on the other counts, *United States* v. *Hamilton*, 694 F.2d 398, 401 (5th Cir. 1982); *United States* v. *Scott*, 659 F.2d 585, 589 (5th Cir. 1981), *cert. denied*, 459 U.S. 854 (1982), or when there is a "substantial identity" among the facts and participants in the different counts, *United States* v. *Long*, 674 F.2d 848, 854 (11th Cir. 1982). Here, the evidence of the business relationship between defendant and Wiley Fairchild, defendant's involvement in the handling of Drew Fairchild's case, and defendant's discussions relating to Drew Fairchild's case were admissible as to Count I *and* the perjury counts. Such evidence would be admissible in a trial on the perjury counts alone as background evidence and as evidence of motive and intent.

It is also clear that the jury considered each count separately. Defendant was acquitted on Count II (perjury) which undermines defendant's argument that the jury was predisposed to convict defendant on the perjury counts by the mere inclusion of Count I. Worth noting too is that defendant was acquitted of Count I. This is not a case where the jury convicted the defendant of the count complained of and then became predisposed to convict on the remaining counts.

The Court is convinced that the jury carefully considered each count separately which, of course, they were instructed to do. The jury deliberated over a two-day period and sent various notes to the Court during that time which also lead the Court to believe that they carefully sifted through all the evidence with respect to each count.[1] The Court finds no merit in defendant's "taint" argument.

4. Juror Bias

Defendant next contends that certain jurors were biased against defendant. This argument has two prongs. The first alleges that three jurors were biased against defendant but did not reveal their biases when examined during voir dire. The second alleges that four jurors read newspaper articles and watched television news stories about the trial prior to sequestration despite the Court's instructions.

---

[1] All notes received from the jury and subsequent in-chambers discussions are, of course, part of the record.

With respect to the first allegation, defendant relies on the Affidavit and testimony of Linda Gallagher who was on the jury panel but did not sit as a juror or alternate at trial. Ms. Gallagher alleged that jurors Bernadette Clifton, Lillie Mize and Peggy Crawford all made remarks to her indicating their prejudices against defendant.[2] Because of defendant's motion and the Affidavit of Linda Gallagher filed therewith, the Court held an evidentiary hearing in which Linda Gallagher and all three jurors in question testified. All three jurors vehemently denied making the statements attributed to them by Linda Gallagher. All three jurors denied making any similar statements and further stated that they had not even heard anybody else make any similar statements.

Jury selection in this case took nearly five days. The Court allowed extensive questioning of individual jurors because of pretrial publicity and to insure a fair and impartial jury. These three jurors were each questioned individually by attorneys for both sides. Each of these jurors affirmed at that time that she could be impartial and fair to both the government and defendant. Each reiterated that impartiality during the evidentiary hearing.

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2/ See Affidavit of Linda Gallagher dated March 4, 1985 submitted with Defendant's Motion for New Trial.

The Court finds the testimony of these three jurors credible but does not find the testimony of Linda Gallagher credible. Gallagher's testimony is suspect for a number of reasons. She either intentionally lied or was careless in her Affidavit and the questionnaire she completed. She admitted that the words "about the trial" should have been deleted from her Affidavit when she stated that fellow jurors read newspaper articles and watched television news stories despite the Court's instructions. Her questionnaire was misleading insofar as she denied having been arrested, having been the victim of a crime and having knowledge of her husband's prior record. There was also testimony that she spent much of the time during the jury selection process drinking beer and "partying" which indicate she may not have taken the process seriously. She also has a history of mental health problems which include two attempted suicides. The jurors who testified also stated that Gallagher was shunned by others on the panel because of her loud and abrasive demeanor.

Gallagher also stated that she tried to see counsel for defendant with her concerns but was turned away by a marshall on the Saturday the jury was selected. All of the marshalls who were on duty that day testified. They were all familiar with Gallagher and characterized her as "loud" and the type who sought attention. None of them recalled being approached by Gallagher with a request to see counsel or the

Court.[3] For all of these reasons, the Court discredits Gallagher's testimony with respect to the alleged biases of jurors Clifton, Mize and Crawford. The Court found the three jurors to be sincere and credible witnesses.

The other allegation raised by Gallagher's Affidavit is that of jurors watching television news or reading news coverage of the trial during the week of jury selection. Gallagher admitted during the evidentiary hearing that she really ~~did~~ not know whether anyone had actually been exposed to coverage "about the trial" and that her Affidavit was in error on that point. Nevertheless, the Court allowed jurors Clifton, Mize, Crawford and John Wesley Davis to be questioned on this point.

Jurors Clifton and Mize denied watching any television news or hearing any news on the radio. They further denied reading anything about the trial during the week of jury selection. The Court has no reason to disbelieve these jurors and finds their testimony credible.

Juror Peggy Crawford admitted she watched television in the evening during the week of jury selection and did not turn the news off at 10:00 p.m. She recalled seeing the news, including coverage of the trial, on Wednesday, Thursday and

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[3] The Court also notes that counsel for both sides and the Court were readily available during the five days of jury selection. At no time during this period did Gallagher attempt to raise any concerns with counsel or the Court

Friday nights. She said she only remembers news accounts on how many jurors had been selected and that the news did not influence her in any way.

Juror John Wesley Davis testified that he did not watch any "news" during the jury selection week but had seen at least one "newsbreak" which reported how many jurors had been selected. He also stated that he listened to his car radio while commuting home but did not recall hearing any news of the trial.

The Court first notes that the jury in this case was sequestered preceding opening statements through final deliberations. So too did the Court allow extensive individual examination during voir dire by attorneys for both sides. The limited contact jurors Crawford and Davis had with media coverage during the week of jury selection does not warrant a new trial. There was certainly no news account of any testimony or argument of counsel because the jury was sequestered prior to the actual start of trial.

Before this Court will grant defendant a new trial on the basis of adverse publicity, defendant must "demonstrate an actual, identifiable prejudice attributable to that publicity on the part of members of his jury." Mayola v. State of Alabama, 623 F.2d 992, 996 (5th Cir. 1980), cert. denied, 451 U.S. 913 (1981). Defendant has only shown (1) that Peggy Crawford watched three television newscasts that were accounts of how the jury selection process was progressing, and (2) that

John Wesley Davis *may* have heard radio news accounts and did see at least one "newsbreak" regarding the selection process. Defendant has not pointed to *anything* negative or adverse in these news accounts. Nor has he shown that the news accounts in any way affected the impartiality of these jurors.

Defendant is entitled to "a panel of impartial, 'indifferent' jurors" who decide the case based on the evidence adduced at trial. *Mayola* v. *State of Alabama*, *supra*, 623 F.2d at 998. The constitutional standards of fairness, however, do "not require jurors to be wholly ignorant of the case." *Id.* Defendant has failed to show that he was in any way prejudiced by the very limited contact these jurors had with news accounts of the trial. Accordingly, the Court finds defendant's argument to be without merit.

5. *Perjured Testimony*

Defendant next contends that he is entitled to a new trial because Bud Holmes' testimony was perjured. In order to obtain a new trial based on a perjury allegation, defendant must show the following:

(1) the statements actually were false;

(2) the statements were material, i.e., "a highly significant factor reasonably likely to have affected the judgment of the jury"; and,

(3) the prosecution knew they were false.

*United States* v. *Mack*, 695 F.2d 820, 822-23 (5th Cir. 1983). *See also* *United States* v. *Chagra*, 735 F.2d 870, 874 (5th Cir.

1984). For the following reasons, the Court finds defendant's argument without merit.

The Court gave defendant an opportunity during the post-trial evidentiary hearing to demonstrate the alleged perjury. Defendant has failed to show that Holmes' testimony was, in fact, perjurious. During trial, Holmes testified that the "phone call incident" occurred prior to his passing Drew Fairchild's case to the files[4]. Holmes tried to date the phone call in various ways. He testified that he believed the call took place on May 14, 1982--the night before he attended a wedding, the night of a hair-pulling incident between his girlfriend and secretary, and the night defendant came to his farm to pick up some turkeys Holmes was keeping. Holmes emphasized, and stated repeatedly, that it could have been a different day. He stated he was only certain that the call preceded passing Fairchild's case to the files.

Defendant's evidence did not show that the call did not occur prior to Fairchild's case being passed to the files. Defendant's evidence, at best, tended to impeach Holmes' recollection that the call occurred on the night of the hair-pulling incident and on the night defendant was at Holmes' farm to pick up some turkeys. Defendant's evidence fell short even on these two points.

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[4] Records introduced at trial reflect that Fairchild's case was passed to the files in December, 1982

With respect to the hair-pulling incident, Katie Matison testified she first learned of the incident in 1983 and felt it had been a "recent occurrence." She was not a witness to the incident but is convinced it occurred in 1983.[5]

Juxtaposed to Matison's testimony is the stipulation between counsel that six government witnesses would testify that the hair-pulling incident occurred in the spring of 1982. In addition, Meg Cosby testified that she learned of the incident from Prentiss Smith while she worked for Smith prior to her leaving to move to Alabama in July, 1982. She also recalled discussing the matter with one of the participants prior to the end of August, 1982.

It is clear that there is conflicting testimony on when the hair-pulling incident occurred. Defendant has failed to prove, however, that Holmes' testimony on this point was false. Defendant has, therefore, failed to establish the first element of falsity with respect to the hair-pulling incident.[6]

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[5] Defendant has argued that the government chose not to put on their rebuttal witnesses at trial after learning that Katie Matison would contradict them. Counsel for defendant has stated that government counsel were convinced that their rebuttal witnesses were ready to perjure themselves to support Holmes' testimony. The Court has considered all the testimony on this point including that of Assistant United States Attorney Weingarten and rejects defendant's argument. Weingarten has specifically denied that he was convinced Katie Matison's testimony was accurate. The Court believes that the decision not to call the rebuttal witnesses was a tactical one and not one based on a belief that the rebuttal witnesses were prepared to commit perjury.

Defendant also challenged Holmes' dating of the occasion defendant picked up turkeys at Holmes' farm. Prentiss Smith testified that he recalled a hunting trip to Vicksburg in 1983. Smith introduced invoices which reflected a chartered airplane trip to Vicksburg in 1983. He further testified that he "learned" that defendant had been hunting there and was giving some turkeys to Holmes. Dan McDonald testified that he too was on this trip in 1983 and also recalled defendant's turkeys being given to Holmes.

The testimony of these individuals is also suspect. Prentiss Smith is the father of Katie Matison. During trial, Matison was interviewed by the prosecution team in the company of her father. Smith was asked at that time about this trip to Vicksburg and could not recall defendant ever being present in Vicksburg. At the post-trial hearing, Smith could not recall who told him about the turkeys or any other conversations. He had no first-hand knowledge of turkeys being exchanged in Vicksburg and could recall little else about the trip.

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[6] Although the Court need not look to the materiality of the statement because the statement has not been proven false, the Court is not convinced of its materiality. The timing of the hair-pulling incident is one event Holmes used to date the phone call. Holmes emphasized, however, that he could be wrong on the exact dating but was certain the call preceded passing Fairchild's case to the files. Even if defendant conclusively established that the hair-pulling incident occurred in 1983, the Court is not convinced of the materiality of that fact given Holmes' admitted uncertainty of precise dates.

Dan McDonald did not have any first-hand knowledge of turkeys being given to Holmes in Vicksburg. Neither did he recall who told him about this or any other conversations during the trip. In fact, McDonald remembered little about the trip except that Holmes was taking turkeys to Hattiesburg for defendant. The Court has difficulty finding the testimony of Smith and McDonald credible.

Even if the Court accepted the testimony of these witnesses, defendant has still not proven that Holmes' testimony was perjured. Defendant testified at trial that he went turkey hunting every year and that he and Holmes had been to Vicksburg together more than once. The Court also notes that Holmes testified that he believed the phone call took place when defendant picked up his turkeys but was not sure of the exact date of the call. Holmes stated that he could be mistaken as to the exact date of the call but is certain it occurred prior to Fairchild's case being passed to the files.

The crucial testimony is Holmes' statement that the phone call preceded Fairchild's case being passed to the files. Holmes was corroborated on this point by Wiley Fairchild and Carroll Ingram. Holmes admitted uncertainty with respect to specific dates. Defendant has not established that Holmes' testimony was perjured in any way and certainly not on the material testimony that the phone call preceded Fairchild's case being passed to the files. Accordingly the Court will not grant defendant a new trial on this ground.

## 6. Dental Records

Defendant's final argument is that he should be granted a new trial because the government failed to produce dental records of defendant which reflect treatment received in Hattiesburg on May 14, 1982. Bud Holmes, of course, stated that his best recollection was that the phone call occurred on May 14, 1982 although he was not certain of that specific date and that "it could have been a different date."

Defendant argues that he should have received these records under Rule 16, F.R.Crim.P., because they were "material" to preparation of the defense. The government stated that it did not discover these records in their files until after trial when they were preparing for the post-trial evidentiary hearing.[7] The Court has heard arguments of counsel and considered this matter and has determined that whether or not the documents should have been produced with the Rule 16 production, defendant has not been prejudiced by non-disclosure. Indeed, the government was prejudiced by not having these records available at trial.

At trial, defendant tried to establish that he was in Biloxi on May 14, 1982. The dental records show he was in Hattiesburg at 3:00 p.m. receiving dental treatment. Although

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[7] The Court finds that the government acted in good faith. These documents were certainly not hidden from defendant intentionally. In fact, the government's case would have been bolstered had the records been available for use at trial.

Holmes admitted the phone call from the farm could have occurred on another date, the government certainly was trying to show that it could have occurred on May 14. Hence, the dental records only help the government and hurt defendant. The Court fails to see how defendant was prejudiced by not receiving these records.[8]

The Court does not find that defendant was prejudiced in any way by the government's inadvertent failure to disclose these records. Accordingly, defendant's motion for a new trial on this ground is denied.

Conclusion

For the foregoing reasons, defendant's Motion for Judgment of Acquittal or, in the alternative, for a New Trial on Counts III and IV is denied.

James H Meredith
United States District Judge

Dated: April 11, 1986

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[8] The Court also notes that this is not a case where the documents were not disclosed prior to trial and were then used by the government at trial. As government counsel stated on the record, the government was prejudiced by not having these records at trial.

COMMITTEE EXHIBIT NO. 44

[redacted]

**UNITED STATES of America,**
**Plaintiff-Appellee,**

**v.**

**Walter L. NIXON, Jr.,**
**Defendant-Appellant.**

**No. 86–4248.**

United States Court of Appeals,
Fifth Circuit.

April 30, 1987.

Defendant-judge was convicted in the United States District Court for the Southern District of Mississippi, James H. Meredith, J., sitting by designation, of perjury before a federal grand jury, and he appealed. The Court of Appeals, Van Graafeiland, Circuit Judge, sitting by designation, held that: (1) evidence supported finding that defendant-judge gave false testimony and that defendant-judge knew testimony was false, and (2) evidence of defendant-judge's investment in oil property was for jury, and District Court did not err in refusing to dismiss bribery charge against defendant-judge at conclusion of proof.

Affirmed.

**1. Perjury ⊂=1**

To obtain perjury conviction, Government must prove that defendant's statements were material, that they were false, and that, at time they were made, defendant did not believe them to be true.

**2. Perjury ⊂=33(1)**

Evidence supported finding that defendant-judge's testimony before federal grand jury regarding his possible intervention in individual's prosecution was false, and that defendant-judge knew testimony was false, thus supporting his conviction for perjury; defendant-judge testified before grand jury that he had not talked to county district attorney about charges against individual, while witnesses testified that defendant-judge had gone to district attorney in attempt to get district attorney to carry through on plea agreement with individual, and district attorney testified that during perjury investigation defendant-judge had attempted to determine whether conversation in which individual's case was discussed had been tape recorded. 18 U.S.C.A. § 1623.

**3. Criminal Law ⊂=1044.1(2)**

Joinder for trial of one count of bribery and three counts of perjury against defendant did not constitute prejudicial error where defendant did not move for severance of bribery count and where proof on all four counts was intertwined.

**4. Indictment and Information ⊂=121.1(1)**

Purpose of bill of particulars is to minimize surprise by giving sufficient notice of charge for its defense, and district court's decision to deny demanded particulars is discretionary and will not be reversed absent showing of surprise and substantial prejudice.

**5. Bribery ⊂=13**

Evidence of defendant-judge's investment in oil property with assistance of individual, and backdating of documents evidencing investment so they antedated case in which individual's son was involved and in which defendant-judge allegedly attempted to improperly intercede, was for jury in defendant-judge's trial on bribery count.

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RECEIVED
U.S. COURT OF APPEALS
FIFTH CIRCUIT

FEB 1 1988

CIRCUIT EXECUTIVE

REPORTED AT
816 F.2d 1022

Appeal from the United States District Court for the Southern District of Mississippi

Before VAN GRAAFEILAND,* GARWOOD, and JONES, Circuit Judges.

VAN GRAAFEILAND, Circuit Judge:

Walter L. Nixon, Jr. (hereinafter "appellant") appeals from a judgment of the United States District Court for the Southern District of Mississippi, convicting him of perjury before a grand jury. 18 U.S.C. § 1623. We affirm.

Although appellant's trial was a lengthy one, the events leading to his grand jury testimony may be fairly briefly summarized. Appellant had been a judge of the very court in which he was convicted since 1968, and Chief Judge of that court since 1982. A married man with three children, he had for some years prior to the incidents at issue herein been dissatisfied with his modest judicial salary, and had looked for means of augmenting it. In 1980, he found these means in the person of Wiley Fairchild, a successful investor in oil and gas properties. Through the intercession of Carroll Ingram, Fairchild's attorney, appellant was able to purchase an interest in three oil well properties at an extremely modest price. By the time appellant's case went to trial in 1986, appellant had recouped his investment some six times over.

Fairchild, the source of appellant's good fortune, had a son, Reddit Andrew Fairchild, more generally known as "Drew". With a partner named Bob Royals, Drew operated a business at the Hattiesburg Municipal Airport, in which, among other things, they serviced airplanes. In August 1980, Drew and Royals conspired with several others to pick up a load of marijuana in Colombia and fly it to the United States. Drew's and Royals' role was to provide confidential access to the airport and to refuel the plane. *See United States v. Royals*, 777 F.2d 1089 (5th Cir.1985). The conspiracy was brought to an abrupt halt by law enforcement officials who met the plane at the airport.

Despite Drew's admitted participation in the conspiracy, he was not indicted by a federal grand jury until March 29, 1985. The events which intervened were somewhat bizarre. Although Drew was not arrested at the scene of the crime, he was concerned that eventually he would be. Three of Drew's coconspirators were indicted by a federal grand jury on August 19, 1980, and, shortly thereafter, Drew sought legal help. He and attorney William Porter went to Forrest County District Attorney Paul ("Bud") Holmes to discuss Drew's situation, and Holmes sent them to United States Attorney George Phillips, who was overseeing the prosecution of the indicted conspirators. The end result of their meeting with Phillips was a "Memorandum of Understanding", executed on November 19, 1980, in which Drew agreed to plead guilty and to cooperate with the Government, in exchange for which the Government would recommend a five-year sentence with execution suspended and a $15,000 fine.

Porter then requested $10,000 in payment for his services. Upon Drew's refusal to pay, Porter commenced suit against him in March 1981. When Drew was questioned by his father, he told his father that he thought Porter had spent about twenty-five hours on his case. Unknown to Drew his father then sent Porter a check for $2,669.19 on July 3, 1981. Porter insisted, however, that he was entitled to the full amount of his bill, and he complained to his friend Holmes about his inability to collect it. Concluding that an indictment of Drew would help bring about payment of the balance of Porter's fee, Holmes, after clearing the matter with United States Attorney Phillips, presented the case against Drew and a theretofore unindicted coconspirator, Robert Watkins, to a State grand jury. On August 26, 1981 the grand jury returned an indictment against both Drew and Watkins. On September 3, 1981, the day on which Drew was arraigned, his father gave Porter a check for $7,500.

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* Circuit Judge of the Second Circuit, sitting by designation.

Thereafter, Drew agreed to testify against Watkins in return for assurances from Holmes that he would receive five years probation and a $5,000 fine. On January 12, 1982 he pled guilty, and sentencing was scheduled for March 19, 1982. Because Drew was recovering from back surgery in March, his sentencing was continued to the July 1982 term. Thereafter, it was continued to the August term, to the November term, and then indefinitely. On December 23, 1982 Holmes moved successfully to have Drew's case "passed to the file", a procedure which places cases in an inactive status and generally results in their termination.

In Drew's case, however, the media, in his words, "made a big issue of it", and his case remained "in the file" for only three weeks. When Holmes was asked why this was so, he testified in part:

> Well, because I had made the statement once Watkins [who had been a fugitive] got back I was going to open it up. That and the fact it was an awful lot of publicity on it, the television, newspapers had picked it up, they were talking about the fact this very wealthy, son of a very, very wealthy man in Hattiesburg, like his case had been swept under the rug, they were editorializing about it. I made the public statement that when we got Watkins got back up here I was going to bring it back out of the file if we could get him.

Although the reinstated case was assigned to a different judge, Drew still was not called for sentencing. His case was continued through 1983 and 1984 and into March 1985, when the Forrest County Circuit Judge to whom the case had been reassigned announced that he would not honor Drew's plea agreement. Drew then was indicted in federal court, and, after pleading guilty, was sentenced to six months in prison.

When the FBI was informed of appellant's oil deal with Fairchild, it suspected that there might be an illicit relationship between it and the somewhat unusual treatment of Fairchild's son. It began an investigation which culminated in the presentation of evidence to a federal grand jury. Appellant voluntarily appeared and testified. The grand jury returned an indictment charging appellant with one count of bribery and three counts of perjury. He was acquitted on the bribery count and the first perjury count but was convicted on the remaining two counts of perjury.

The first count on which appellant was convicted was based on the following allegedly false testimony before the grand jury:

> Q. The grand jury has heard evidence that the prosecutor, the state prosecutor, who eventually handled the case was an individual named Bud Holmes. Is he a friend of yours?

> A. Very good friend of mine, long time friend, yes.
>
> Q. Did he ever discuss the Drew Fairchild case with you?
>
> A. No, not to the best of my recollection. I think I would recall if he had.

The second such count was based on the following testimony:

> All right. Judge, do you have anything you want to add?
>
> THE WITNESS:
>
> Yes, I do.
>
> I want to say this. I—Here (indicating) are your notes too, copies of your instruments, rather.
>
> I came here voluntarily and am very happy to cooperate with this grand jury and give them all the information that I have and that I could. And I have always thought everyone should do that, and that goes for the grand jury over which I'm supervising right now, the other federal grand jury that's sitting at this time. I have nothing at all to—had nothing to hide or nothing to withhold and I brought everything that you asked me to bring.
>
> And I want to say this. That I've been told and led to believe and read in the newspaper and heard on the news media so much about this is an investigation of the Drew Fairchild criminal case. Now, I have had nothing whatsoever officially or unofficially to do with the Drew Fairchild criminal case in federal court or state court. I don't need to reconstruct anything with reference to that. I've told you that from the beginning.
>
> I have never talked to anyone about the case, any federal judge or state judge, federal prosecutor or state prosecutor, and I never handled any aspect of this case in federal court. As you said, Judge Cox handled it. I don't know where—someone told me maybe Judge Russell handled one of the other defendants also and—but I never handled any part of it, never had a thing to do with it at all, and never talked to anyone, state or federal, prosecutor or judge, in any way influence anybody with respect to this case. Didn't know anything about it until I read that account in the newspaper. Didn't even know Mr. Fairchild had a son when I was dealing with him in the business transaction.
>
> So I want to say that because I understand that's what this is all about. The investigation is apparently, if the news media is correct, and if I understand it correctly, that's what this is about, the Drew Fairchild criminal case.

Some of the testimony offered by the Government in support of its claim that the foregoing testimony was false is substantially undisputed. It is undisputed that on one occasion, the exact date being unclear, appellant visited Wiley Fairchild in Fairchild's office. Fairchild testified that he sought out appellant because appellant was a good friend of Holmes and Fairchild "wanted [appellant] to get Bud Holmes to do what he had promised to do." In response to questions by his own attorney, appellant summarized this portion of his conversation with Fairchild as follows:

> Q. Did he ask you to do anything?
>
> A. No.
>
> Q. Did he discuss or you discuss with him in any way the case of Drew Fairchild?
>
> A. No, I did not.

Q. Did you get the impression from him that he wanted you to say anything to anyone about it?

A. I got the impression that he wanted me to mention something about that to Bud Holmes.

Q. Did he make any request of you to do so?

A. No, he didn't.

It is undisputed that, following this conversation, appellant went to Holmes' farm. Holmes testified that he and appellant went there in Holmes' car; appellant said that he drove his own car. Holmes testified further that, en route to the farm, the following conversation took place:

> We was riding up to pick up the turkeys, this would have to be 6, 6:30, 7 o'clock, riding out, and Judge Nixon told me, he said, Bud, I never would have asked you to do anything against your oath of office, never asked you to do anything embarrassing to you, wouldn't ask you to do anything wrong. I said, yes, sir. He said, I was out at Mr. Fairchild's and he asked me to put in a good word for his boy, or would I say something to you about Drew. —I think, I don't think he said Drew. I think he said his boy. I said, you know, well, I don't know. I don't know. What is it you want? You want an apology? I don't know. What does the man want?
>
> Q. Are you saying did you say that to Judge Nixon?
>
> A. Yeah, that was about my response. I can't remember this, because as I recall this was like in May of 82, you know, when this occurred. But that was about my response, I mean, I was feeling rich and good-looking and, you know, that would have been my typical type answer. He said I'm not asking you to do anything. I'm just saying that Mr. Fairchild asked me to put in a good word. Well, I knew Mr. Fairchild and the judge were kind of getting to be buddy-buddies there.
>
> Q. How did you know that?
>
> A. Pardon?
>
> Q. How did you know that?
>
> A. He had told me, or Carroll Ingram had told me that they were or he told me, could a come from Mr. Fairchild.
>
> Q. Did he tell you why he'd called Mr. Fairchild?
>
> A. He could have. I don't recall off hand, it seemed like he might have told, somewhere during the conversation I knew there was a chance he was going to make some more oil and gas investments with him. Seemed like he said maybe Mr. Fairchild said they were going to take a trip somewhere, you know, now what point in time, I don't remember but all this was, at that time it was nothing real important to me to really remember, so, don't hold me and say it occurred on that time but general impression I had was they got to be on a first name type basis and friendly. So, I took it on myself, said, well, judge, hell, I'm district attorney, I'll pass it to the files. And he said no, I'm not asking you to do that. Now, I'm not asking you to do anything now.

Holmes also testified concerning what transpired after he and appellant reached the farm:

> Well, okay. We rode on out to the farm, got the turkey, went inside. I asked him to come in, have a drink.
>
> Q. Whose house did you go to?

A. Go to mine, which was out in the Barrington community. We went inside. He said that he'd come in and have a drink, if I had some Royale Salute, that's kind of a joke between us, very expensive scotch whiskey, somebody gave it to me for Christmas a year earlier and I said I did. He came in, we had a drink, probably had a couple of drinks, and I had told him that I had already had this arrangement worked out with Bill Porter, the man had the same agreement that the federal court had offered, which was probation and a fine, in return for his cooperation. He said do you mind if I call and tell Wiley? Or he could have said, Wiley, Mr. Fairchild. He said did he know? I don't know. I assume he did. Carroll Ingram sure knew it. And so he said do you mind if I tell him? I said no, I don't care.

So he called him and as I recall the conversation it's something like—

Q. Who made the telephone call?

A. Pardon?

Q. Who made the telephone call?

A. He did. And he told him, he said, I'm out at, said do you remember the man we were talking about today? I'm out at his farm and he tells me that your son isn't going to jail, which was true, you know, because of the plea arrangement and I just wanted to call and tell you that. And he thanked him, told him I appreciate you letting me make some of these investments, you know, with you, and he said, you know, the judge's salary and the number of children that I'm trying to educate and so forth, it was kind of hard and I do appreciate this opportunity.

And, with that, I told him, I said let me speak to him. And I picked the phone up and I said, Mr. Fairchild, I want to let you know, I hope you don't think there's anything personal about Drew and us and he said no, I never thought that. I'm real embarrassed about that and so forth and I take full blame here because Judge Nixon did not ask me to say or do this, but I told him, I said, I said I want to let you know that I want Judge Nixon to have credit for helping the boy. Of course I was misleading him because I already had the arrangement worked out with Bill Porter.

And I told him, I said I'm going to pass the case to the files. You know, I told Mr. Fairchild that. And that was, you know, basically the sum and substance of it.

Appellant's testimony corroborated that of Holmes in part and contradicted it in part:

Q. Tell us what happens.

A. Well, we were talking and this thing was just weighing on my mind what Mr. Fairchild had accused him of.

Q. Tell us what you said; what he said.

A. I said Bud, I've been talking to Wiley Fairchild. And I said he is accusing you of blackmailing him. He said—I said with reference to this matter some matter with his son. And—

Q. Did you mention to him—now listen to my question. You mentioned the blackmail. Did you mention to him at all how you understood he was being blackmailed?

A. Yes, what I understood by blackmail, Mr. Fairchild indicated to me talking about dragging the good Fairchild name through the mud in the news media.

Q When you told that to Bud, what did he say? Tell us exactly what you remember him saying?

A He said the son of a bitch is paranoid. He said everybody is after his money, he's got so much he'll never be able to spend it, he's crazy.

Q What else did he say?

A He said let me tell you about the case.

Q What did you say?

A Bud, I don't want to hear about the case.

Q Let me stop you a second. Was there anything wrong in your hearing about the case?

A No. I'd have been there all night because it takes Bud an hour to tell you what anybody else could tell you in a minute.

Q Did you have any interest in hearing about the case?

A No.

Q When you told him that you didn't want to hear about the case, what did he say?

A He said well, the thing's all worked out anyway. He said, I don't understand what he's talking about.

Q Did he tell you anything else?

A I don't recall that he did.

Q Was there any—he told you when he said to you the thing's worked out, he doesn't know what he's talking about?

A Yes.

Q Did you say anything more than that to him?

A No.

* * * * * *

Q Coming back all seriousness while you're there listening to records having a drink and looking at the records, while he's making these calls, tell us what else occurs?

A. In a few minutes he said, called me over, judge come here a minute. He called me judge and I called him Bud. He handed me the telephone. He said here, talk to Wiley Fairchild.

Q. Go ahead.

A. So I took the phone and I told him hello and he said how are you judge, and I don't know whether Mr. Fairchild was half asleep or half drunk or what but he didn't sound just right. And he said I'm glad you mentioned that matter to Bud. He said I'm satisfied.

Q. Anything else?

A. No.

Q. What did you do with the phone?

A. I handed it back to Bud. When he handed it to me, he told me he wanted to talk to him again when I got off.

Q. Do you have any awareness at that point what Bud had said to Wiley before he handed you the phone?

A. No.

Q. What was your state of mind or how did you feel about Bud having made that call to Wiley?

A. Well, I was taken aback. I didn't know he was going to call Wiley Fairchild.

Q. Did Bud then speak to him for another minute or two?

A. I guess so. I handed him the phone and walked back over by the records. I was disgusted.

Q. Did you say anything to Bud after he got off the phone?

A. Yeah. I said Bud, why did you call Wiley and what did you say to him. He said I just wanted to get the damn thing straightened out.

Q. That's it?

A. That's all.

Unfortunately for appellant, Holmes' testimony concerning the telephone call to Fairchild was corroborated by Fairchild himself:

Q. Okay. Did you have subsequent contact with Judge Nixon about your meeting?

A. He called me that night just about seven o'clock.

Q. What did he say?

A. He said Wiley, you know that man we was talking to this evening? I said yeah. He said well, I'm in his home, and everything going to be taken care of to your satisfaction. I says thank you, I appreciate that.

Q. Did you recognize the voice at the other end?

A. Yeah.

Q. Did he identify himself?

A. No.

Q. How did you recognize his voice?

A. I just can recognize voices.

Q. What followed that conversation with Judge Nixon?

A. Bud got on the phone, Bud Holmes.

Q. And did you recognize his voice?

A. Oh, yeah. Yeah.

Q. What did he say to you?

A. He said Wiley, when this man asks me to do something, I don't ask no questions. I just go ahead and do it.

Q. What did you say?

A. I said thank you, Bud. I appreciate that.

Q. Was there any further conversation?

A. No.

Q. What's the next thing that you recall happening in your son's case?

A. Well, it was later passed to the file.

Holmes' testimony also was substantially corroborated by Carroll Ingram:

Q. ... [Wiley Fairchild] mentioned to you that he had asked something of Judge Nixon in terms of asked him to speak to Bud Holmes, correct?

A. Yes, he asked to—

Q. I beg your pardon. Go ahead.

A. Yes, he said that he asked Judge Nixon to speak to Bud Holmes.

Q. And that it was about the case?

A. And it was about Drew Fairchild's case.

Q. And that's as far as you went. You know nothing more than from Wiley Fairchild about it, correct?

A. I know that Wiley Fairchild told me that Judge Nixon confirmed that he had spoken to Bud Holmes about the case.

Q. Excuse me. Judge Nixon confirmed that to you yourself?

A. Certainly he did.

• • • • • •

Q. In fact, Judge Nixon had volunteered to you that on one occasion he had in fact, at Wiley Fairchild's request, spoke about Drew Fairchild to Bud Holmes?

A. He certainly had, absolutely.

[1] To obtain a perjury conviction, the Government must prove that the defend-

ant's statements were material, that they were false, and that, at the time they were made, the defendant did not believe them to be true. *United States v. Fulbright*, 804 F.2d 847, 851 (5th Cir.1986). The materiality of appellant's challenged grand jury testimony was a question of law for the trial judge. *United States v. Thompson*, 637 F.2d 267, 268–69 (5th Cir.1981). Appellant does not challenge the correctness of the district judge's holding that the subject matter of appellant's testimony was material to the grand jury's investigation.

[2] The evidence on the remaining issues must, of course, be viewed in a light that is most favorable to the Government, with all reasonable inferences and credibility choices made in support of the jury's verdict. *Glasser v. United States*, 315 U.S. 60, 80, 62 S.Ct. 457, 469, 86 L.Ed. 680 (1942); *United States v. Lamp*, 779 F.2d 1088, 1092 (5th Cir.), *cert. denied*, — U.S. —, 106 S.Ct. 2255, 90 L.Ed.2d 700 (1986). The standard is the same whether the evidence is direct or circumstantial. *Glasser, supra*, 315 U.S. at 80, 62 S.Ct. at 469; *United States v. Escobar*, 674 F.2d 469, 477 (5th Cir.1982). We did not see or hear the witnesses testify, the jury did. After viewing the cold and impersonal record in the light most favorable to the Government, we must affirm if "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979); *see United States v. Shaw*, 701 F.2d 367, 392 (5th Cir.1983), *cert. denied*, 465 U.S. 1067, 104 S.Ct. 1419, 79 L.Ed.2d 744 (1984). This is so because a jury may choose its verdict among reasonable constructions of the evidence so long as the evidence establishes guilt beyond a reasonable doubt. *United States v. Thomas*, 768 F.2d 611, 614 (5th Cir.1985) (*quoting United States v. Bell*, 678 F.2d 547, 549 (5th Cir.1982) (en banc), *aff'd on other grounds*, 462 U.S. 356, 103 S.Ct. 2398, 76 L.Ed.2d 638 (1983)). Viewing the evidence in the manner above described, we can reach no other conclusion save that it warranted the jury in finding that appellant's testimony was false.

The jury also could properly find that appellant knew his testimony was false. Such knowledge can be, and usually must be, proved from circumstantial evidence. *See United States v. Caucci*, 635 F.2d 441, 444 (5th Cir.), *cert. denied*, 454 U.S. 831, 102 S.Ct. 128, 70 L.Ed.2d 108 (1981). Holmes testified on behalf of the Government that, during the FBI's investigation, appellant called him and said that he had told the investigators that "he never talked to anyone at anytime about the case." Appellant subsequently made the same statement to Holmes in a face-to-face meeting, and then asked Holmes to find out whether appellant's telephone conversation with Fairchild from the farm had been taped. It had not. A reasonable jury could conclude from these conversations that appellant was planning to hide the true facts from the grand jury and was soliciting Holmes' support. *See United States v. Abrams*, 568 F.2d 411, 419 (5th Cir.), *cert. denied*, 437 U.S. 903, 98 S.Ct. 3089, 57 L.Ed.2d 1133 (1978).

There is no merit in appellant's belated attempt to argue ambiguity. There certainly is no ambiguity in the question, "Did [Holmes] ever discuss the Drew Fairchild case with you?". This was not a question that required a recollection covering a full lifetime, but necessarily was limited to the period following Drew's indictment and Holmes' retirement from office in 1984.

Its clarity was amply demonstrated by appellant's voluntary comments that followed, in which he said that he had read in the newspapers that "this is an investigation of the Drew Fairchild criminal case", and that he "didn't know anything about it until [he] read that account in the newspaper"; that he had "never talked to anyone, state or federal, prosecutor or judge, in any way influence anybody with respect to this case." The record shows that appellant answered the question without hesitancy, evasion, or qualification. *United States v. Caucci, supra*, 635 F.2d at 445. If in the natural meaning in the context in which his words were used they were materially untrue, perjury was established. *United States v. Bonacorsa*, 528 F.2d 1218, 1221 (2d Cir.), *cert. denied*, 426 U.S. 935, 96 S.Ct. 2647, 49 L.Ed.2d 386 (1976).

There was no need for the district court to define the word "discuss" for the jury. "[W]ords that are clear on their face are to be understood in their common sense and usage." *United States v. Fulbright, supra*, 804 F.2d at 851. Appellant's counsel had no hesitancy in using the same word in questioning his client; *e.g.*, "Did he discuss or you discuss with him in any way the case of Drew Fairchild?", "What if any discussion do [sic] you have with him at that time?".

We also conclude that appellant's reliance on *Bronston v. United States*, 409 U.S. 352, 93 S.Ct. 595, 34 L.Ed.2d 568 (1973), is misplaced. In *Bronston*, the Supreme Court held that the federal perjury statute does not reach a literally true but unresponsive answer, even if the witness intended to mislead his questioner and even if the answer was arguably false by negative implication. Appellant argues that the prosecutor could not have intended his question to refer to the discussion appellant did have with Holmes, because the prosecutor knew nothing about the discussion until after appellant testified. For this reason, appellant argues, the prosecutor's question was impermissibly vague and imprecise under the rationale of *Bronston*. We find this argument unpersuasive. The purpose of a grand jury inquiry is to discover whether a crime has been committed and, if so, who committed it. *In re Marc Rich & Co. A.G.*, 707 F.2d 663, 665–66 (2d Cir.), *cert. denied*, 463 U.S. 1215, 103 S.Ct. 3555, 77 L.Ed.2d 1400 (1983). *Bronston* does not require that a prosecutor know how a defendant will answer a question before he asks it.

[3] Appellant makes numerous allegations of prosecutorial misconduct, which are not of significant merit, separately or collectively, to require individualized discussion. We see no prejudicial improprieties in the Justice Department's interview of appellant during its preliminary investigation, the tape of which was placed in evidence by the defense. No objection concerning alleged grand jury abuse was made below, and no meritorious objection has been made to this Court. *See United States v. Calandra*, 414 U.S. 338, 343–45, 94 S.Ct. 613, 617–18, 38 L.Ed.2d 561 (1974); *United States v. Brown*, 574 F.2d 1274, 1275–77 (5th Cir.), *cert. denied*, 439 U.S. 1046, 99 S.Ct. 720, 58 L.Ed.2d 704 (1978). See also *United States v. Mechanik*, — U.S. ——, 106 S.Ct. 938, 89 L.Ed.2d 50 (1986). There is no merit in appellant's contention that the bribery count was insufficient as a matter of law. "An indictment returned by a legally constituted and unbiased grand jury ... if valid on its face, is enough to call for trial of the charge on the merits." *Costello v. United States*, 350 U.S. 359, 363, 76 S.Ct. 406, 408

100 L.Ed. 397 (1956). Appellant did not move for severance of the bribery count. Since the proof on all four counts was necessarily intertwined, no prejudicial error resulted from the fact that they were tried together. *United States v. Duzac*, 622 F.2d 911, 913 (5th Cir.), *cert. denied*, 449 U.S. 1012, 101 S.Ct. 570, 66 L.Ed.2d 471 (1980); *see United States v. O'Connell*, 703 F.2d 645, 648–49 (1st Cir.1983).

Appellant grasps at straws in arguing that the prosecutor misstated the evidence he proposed to produce when he opened to the jury and misstated the evidence actually produced when he summed up. In evaluating allegations of such prosecutorial misconduct, the "test ... is whether the remarks were improper and whether they prejudicially affected substantial rights" of the defendant. *United States v. Dorr*, 636 F.2d 117, 120 (5th Cir.1981); *see Darden v. Wainwright*, — U.S. —, 106 S.Ct. 2464, 91 L.Ed.2d 144 (1986). We have carefully reviewed the prosecutor's comments in the context of the entire case, including the district court's admonishments to the jury that statements by counsel were not evidence, *see Donnelly v. DeChristoforo*, 416 U.S. 637, 643, 94 S.Ct. 1868, 1871, 40 L.Ed.2d 431 (1974); *United States v. Cardenas*, 778 F.2d 1127, 1130–31 (5th Cir. 1985), and we are completely satisfied that they pass this test. In view of the complete lack of merit in appellant's argument, we see no need for a more detailed discussion.

[4] Appellant's contention that he was denied due process and a fair trial because all of the requested information in his demand for a bill of particulars was not furnished, is without substance. The purpose of a bill of particulars is to minimize surprise by giving "sufficient notice of a charge for its defense." *United States v. Carlock*, 806 F.2d 535, 550 (5th Cir.1986). A district court's decision to deny demanded particulars is a discretionary one which will not be reversed absent a showing of surprise and substantial prejudice. *Id.* Appellant has made no such showing.

[5] Equally without substance is appellant's claim that he was prejudiced by the district court's "erroneous" refusal to dismiss the bribery charge at the conclusion of the proof. In response to appellant's motion for acquittal, the prosecutor pointed out that appellant had already made $50,000 profit "with more to come" on a $9,000 investment, and that there was ample evidence that appellant had rendered assistance to his benefactor's son. There was also proof in the case that the documents evidencing appellant's oil property investment had been backdated, so that they antedated the aborted drug conspiracy by approximately six months, and that the name of the grantee was withheld from Fairchild's employee who prepared the deeds of conveyance. Despite this evidence, the jurors rejected the Government's claim of bribery. This does not mean, however, that they should not have been permitted to consider it. In any event, appellant has not shown that the denial of his motion tainted the jury's consideration of the three perjury counts, on one of which appellant was acquitted. *See United States v. Zicree*, 605 F.2d 1381, 1388–89 (5th Cir.1979), *cert. denied*, 445 U.S. 966, 100 S.Ct. 1656, 64 L.Ed.2d 242 (1980).

Appellant's unspecified and unsubstantiated claims of evidentiary error do not merit discussion. Neither does appellant's claim of error in the court's denial of his motion for a new trial on the ground of "newly discovered evidence." The district court gave careful consideration to the alleged newly discovered evidence, which was addressed to the date of appellant's conversations with Fairchild and Holmes. It held that, to a large extent, the evidence was not credible and that, in any event, it was not probative of meaningful error in the date which Holmes had assigned. We agree.

The judgment of conviction is affirmed.

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COMMITTEE EXHIBIT NO. 45

UNITED STATES of America,
Plaintiff-Appellee,

v.

Walter L. NIXON, Jr.,
Defendant-Appellant.

No. 86–1248.

United States Court of Appeals,
Fifth Circuit.

Sept. 8, 1987.

Defendant-judge was convicted in the United States District Court for the Southern District of Mississippi, James H. Meredith, J., sitting by designation, of perjury before federal grand jury. Judge appealed. The Court of Appeals, 816 F.2d 1022, affirmed. Judge petitioned for rehearing and sought rehearing en banc. The Court of Appeals held that: (1) affirmative vote of majority of all judges in regular active service was required in order to grant rehearing en banc, even though eleven of fourteen judges had recused themselves; (2) senior circuit judges could not be designated to participate in reviewing en banc suggestion; and (3) requiring majority of judges to vote for rehearing en banc did not violate equal protection and due process.

Petition for rehearing and suggestion for rehearing denied.

**1. Criminal Law ⇐1133**

**Rehearing en banc could not be granted upon vote of less than majority of judges, who were in regular active service and who had not recused themselves; rule, that required majority vote of all judges in regular active service, including those who had recused themselves, would not be modified.** U.S.Ct. of App. 5th Cir.Rule 35.6, 28 U.S.C.A.

**2. Criminal Law ⇐1133**

**Statute, which permits only circuit judges in regular active service to make determination to rehear case en banc, controlled over general provisions of statute, which permits Chief Justice of United States to assign circuit judge temporarily to act as circuit judge in another circuit and statute, which governs assignment of retired judges to active duty; thus, senior circuit judges could not be assigned to decide whether to grant rehearing en banc after majority of circuit judges had recused themselves.** 28 U.S.C.A. §§ 46(c), 291(a), 294(c).

**3. Criminal Law ⇐1133**

**No occasion existed for acting chief circuit judge to present certificate of necessity to Chief Justice of United States for assignment of circuit judge from another circuit to act on petition for rehearing and petition for rehearing en banc, after eleven circuit judges recused themselves; en banc court consisting of three judges of circuit in regular active service was permissible; and three judges in regular active service had not recused themselves.** 28 U.S.C.A. § 291(a).

**4. Criminal Law ⇐1133**

**Rule of necessity was inapplicable to void recusals of eleven circuit judges so that they could decide whether to permit rehearing en banc; en banc court could consist of three judges of circuit in regular active service, and there were three judges in regular active service, who had not recused themselves.** 28 U.S.C.A. §§ 46(c),

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REPORTED AT
827 F. 2d 1019

291(a), 294, 294(c); U.S.Ct. of App. 5th Cir. Rule 35.6, 28 U.S.C.A.

**5. Constitutional Law ⇐249(3), 316**

Requiring affirmative vote of majority of circuit judges in regular active service as prerequisite to rehearing en banc, even though most judges had recused themselves, did not violate equal protection or due process. U.S.Ct. of App. 5th Cir.Rule 35.6, 28 U.S.C.A.; U.S.C.A. Const.Amends. 5, 14.

**6. Criminal Law ⇐1133**

Court of Appeals' panel opinion affirming perjury conviction of federal district judge was not in direct conflict with any United States Supreme Court or Fifth Circuit precedent, did not invoke precedent-setting error of exceptional public importance, and did not justify grant of rehearing en banc; judge's position did not alone suffice to make case appropriate for en banc consideration. U.S.Ct. of App. 5th Cir.Rule 35, 28 U.S.C.A.

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Appeal from the United States District Court for the Southern District of Mississippi.

ON PETITION FOR REHEARING and SUGGESTION FOR REHEARING EN BANC

(Opinion April 30, 1987, 5 Cir., 1987, 816 F.2d 1022)

Before VAN GRAAFEILAND*, GARWOOD and JONES, Circuit Judges.

PER CURIAM:

The petition for rehearing is DENIED, and no member of this panel nor judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Federal Rules of Appellate Procedure and Local Rule 35), the suggestion for rehearing en banc is DENIED.

* * *

This opinion is entered by the panel in response to appellant's "Memorandum Concerning En Banc Procedures" filed herein in connection with, but separate from and subsequent to, appellant's suggestion for rehearing en banc. Appellant's referenced memorandum addresses itself to the circumstance that eleven of the fourteen judges in regular active service on this Court have recused themselves from consideration of appellant's suggestion for rehearing en banc.[1] Appellant's memorandum makes several suggestions in this regard, summarized as follows:

1. That this Court modify its Rule 35.6, which provides that a case cannot be heard or reheard en banc unless a majority of all judges in regular active service on this Court—including any who may be recused in the particular case—vote that the case be heard or reheard en banc. Appellant urges in this connection that, contrary to the explicit provisions of the first paragraph of our Rule 35.6, rehearing en banc should be granted if a majority of the *non* recused judges in regular active service on the Court vote in favor of rehearing en banc.

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* Circuit Judge of the Second Circuit, sitting by designation.

[1] The recused judges are Chief Judge Clark and Judges Rubin, Reavley, Politz, Randall, Johnson, Williams, Jolly, Higginbotham, Davis and Hill. Chief Judge Clark has recused himself both administratively and judicially.

2. In addition, appellant's memorandum also proposes that in any event the number of judges considering appellant's suggestion for rehearing en banc be enlarged "preferably [to] at least seven judges" by one of the following alternatives: (a) appellant's waiver of all the recusals[2]; (b) designation by the Chief Judge of this Court under 28 U.S.C. § 294(c) of senior judges of this Court to participate in reviewing the en banc suggestion; (c) presentation by the Chief Judge of this Court to the Chief Justice of the United States of a certificate of necessity under 28 U.S.C. § 291(a) requesting the assignment of judges from other courts to review the en banc suggestion.[3]

3. That if the foregoing steps are not taken "the Rule of Necessity renders void all of the recusals on the en banc suggestion."[4]

None of the procedures suggested by appellant has been adopted. We further explain as follows.

[1] With respect to our Rule 35.6, it is binding, and was adopted and has continued in force with full knowledge of its implications. *See Hall v. Federal Energy Regulatory Commission*, 700 F.2d 218 (5th Cir.1983), *cert. denied sub nom. Arkla, Inc. v. Hall*, 464 U.S. 822, 104 S.Ct. 88, 78 L.Ed.2d 96 (1984). While we recognize that there is a split in the practice of the Circuits in this regard, it appears that the majority follows the same practice that this Court follows. *See Lewis v. University of Pittsburgh*, 725 F.2d 910, 928–30 (3d Cir.) (statement sur petition for rehearing of Adams, J.), *cert. denied*, 469 U.S. 892, 105 S.Ct. 266, 83 L.Ed.2d 202 (1984); *United States v. Claiborne*, 765 F.2d 784 (9th Cir. 1985), 781 F.2d 1325, 1327, 1334 (9th Cir. 1985, 1986) (dissenting opinions on denial of rehearing en banc), *cert. denied*, — U.S. —, 106 S.Ct. 1636, 90 L.Ed.2d 182 (1986); *United States v. Claiborne*, 790 F.2d 1355, 1356 (9th Cir.1986); *In re Ahlers*, 794 F.2d 388, 414–16 (8th Cir.1986), *cert. granted sub nom. Northwest Bank Worthington v.*

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[2] Appellant's memorandum states he "is willing to waive all such disqualifications, and invites the government to do the same." The Government, in its response to this portion of appellant's memorandum, states in relevant part as follows:

> "The Government did not seek these recusals and we do not waive them at this time. The Government naturally assumes that each judge who recused himself did so with good cause and with full understanding of the effect of the recusal on the en banc process. It does not believe it appropriate to urge recused judges to reconsider decisions that doubtless were not lightly made. Should the Court or individual judges be inclined to reconsider the recusal decisions, the Government would review each judge's disclosure made pursuant to 28 U.S.C. § 445(e) prior to deciding whether or not it believes waiver to be appropriate."

None of the recused judges of this Court has withdrawn his or her recusal. Consequently, we do not further consider such suggestion.

We further observe that the Government, in its referenced response, opposes each of the other suggestions made in appellant's memorandum.

[3] Since Chief Judge Clark has recused himself in this matter administratively as well as judicially, Judge Gee, who is not recused herein and who is the next senior judge of the Court in regular active service, performs the duties of chief judge in this respect. 28 U.S.C. § 45(d). In that capacity, Judge Gee has declined to make the requested designation under section 294(c) and has declined to make the requested certificate under section 291(a). Judge Gee further advises of his concurrence in this opinion.

[4] However, as previously observed, none of the recusals has been withdrawn, and none of the recused judges has participated

*Ahlers*, — U.S. —, 107 S.Ct. 3227, 97 L.Ed.2d 733 (1987) (grant of *certiorari* "limited to Question 1 presented by the petition"; we understand that this question in no way relates to en banc procedures). Further, our rule plainly seems to be sustained by *Shenker v. Baltimore & Ohio R.R. Co.*, 374 U.S. 1, 83 S.Ct. 1667, 1670, 10 L.Ed.2d 709 (1963). Moreover, even if appellant's position were to be adopted, so that rehearing en banc could be granted by the affirmative vote of a majority of nonrecused judges in regular active service, this would avail appellant nothing for no en banc poll has been requested, and even if there were a poll none of the nonrecused judges of this Court in regular active service would in any event vote to grant rehearing en banc in this case.

[2] With respect to the suggestions for designation of senior Circuit judges to participate in reviewing the en banc suggestion pursuant to section 294(c), or for a certificate of necessity under section 291(a) to the Chief Justice of the United States for the assignment of judges from other courts to review the en banc suggestion, we observe that under the wording of 28 U.S.C. § 46(c) and the Supreme Court's holding in *Moody v. Albemarle Paper Co.*, 417 U.S. 622, 94 S.Ct. 2513, 41 L.Ed.2d 358 (1974), only judges of the Circuit who are in regular active service may make the determination to rehear a case en banc. While *Moody* did not expressly refer to either section 291(a) or section 294(c), nevertheless the Supreme Court was doubtless aware of those sections, but made no suggestion that they might be exceptions to the clear provisions of section 46(c). Further, in *United States v. American-Foreign S.S. Corp.*, 363 U.S. 685, 80 S.Ct. 1336, 4 L.Ed.2d 1491 (1960), the Court, in its holding that senior judges could not participate in the decision of an en banc court, made specific reference to section 294, plainly indicating that it did not regard that section as being applicable to en banc proceedings. *Id.* 80 S.Ct. at 1338. Section 46(c) was amended following the decision in *American-Foreign S.S. Corp.*, and now authorizes a senior judge of the Circuit to participate as a member of an en banc court reviewing the decision of a panel of which such judge was a member, such participation in the en banc court to be at the judge's "election and upon designation and assignment pursuant to section 294(c) of this title and the rules of the circuit." However, no senior judge of this Circuit participated in the panel decision in this case. Moreover, the above-quoted portion of section 46(c) indicates that Congress considered the potential applicability of section 294(c) to the service of senior judges in connection with en banc processes, and limited section 294(c)'s applicability in that respect to decisions of the en banc court reviewing panel decisions in which the senior judge of the Circuit participated. In sum, section 46(c), which specifically speaks to the question, must control over the general provisions of sections 294(c) and 291(a).

[3, 4] We also observe that since an en banc court consisting of only three judges of the Circuit in regular active service has been held permissible, *United States v. Martorano*, 620 F.2d 912 (1st Cir.), *cert. denied*, 449 U.S. 952, 101 S.Ct. 356, 66 L.Ed.2d 216 (1980), and since there are three nonrecused judges in regular active service on this Court, there is no occasion for "a certificate of necessity" under section 291(a). The same conclusion likewise follows from the fact that none of the nonrecused judges in regular active service

on this Court deems this case appropriate for en banc consideration, irrespective of the constraints of Local Rule 35.6. And this same reasoning also leads to the conclusion that the "Rule of Necessity" is inapplicable.

[5] Appellant's memorandum takes the position that if the procedures therein suggested are not followed, appellant will be denied equal protection of the laws and due process of the law. We disagree. In *Moody*, the Supreme Court reaffirmed the holding in the *Western Pacific Railroad* case, 345 U.S. 247, 73 S.Ct. 656, 97 L.Ed. 986 (1953), which it characterized as construing section 46(c) to be "a grant of power to the courts of appeals to order hearings or rehearings in banc, not the creation of a right in litigants to compel such hearings or rehearings or even to compel the court to vote on the question of hearing or rehearing." *Moody*, 94 S.Ct. at 2515. *See also Shenker*, 83 S.Ct. at 1670. Indeed, the *Western Pacific Railroad* case recognizes that the full court "may choose to abide by the decision of the division by entrusting the initiation of a hearing or rehearing *en banc* to the three judges" of the panel. 73 S.Ct. at 662 (emphasis in original). That opinion likewise states: "We hold that litigants are given no *statutory* right to compel each member of the court to give formal consideration to an application for a rehearing *en banc*. We hold that the statute does not compel the court to adopt any particular procedure governing the exercise of the power. . . ." *Id.* at 666 (emphasis in original). The Court in the *Western Pacific Railroad* case then went on to observe that "whatever the procedure which is adopted, it should not prevent a litigant from suggesting to those judges who, under the procedure established by the court, have the responsibility of initiating a rehearing *en banc*, that his case is an appropriate one for the exercise of the power." *Id.* (emphasis in original). Our procedure in Rule 35.6 comports with these standards. And, even if that procedure were as appellant claims it should be, it would not avail appellant because none of the nonrecused judges in regular active service deems the case appropriate for rehearing en banc in any event.

We observe in this connection that none of the judges of the panel deciding this case did so under the constraint of being required to follow a prior decision of this Court with which they disagreed but were nevertheless obligated to adhere to under the rule of this Court that only the en banc court can overrule prior panel decisions (unless such decisions have been invalidated by intervening decisions of the Supreme Court).

[6] Finally, under the practice of this Court en banc consideration is limited to cases involving "'a precedent-setting error of exceptional public importance or an opinion which directly conflicts with prior Supreme Court [or] Fifth Circuit precedent.'" *Gonzalez v. Southern Pacific Transp. Co.*, 773 F.2d 637, 641 (5th Cir.1985) (quoting Internal Operating Procedures of the United States Court of Appeals for the Fifth Circuit accompanying Local Rule 35). This case does not fall within either category. The panel opinion is not in direct conflict with any prior Supreme Court or Fifth Circuit precedent. Although appellant characterizes his contentions otherwise, we believe that in substance they actually amount only to a claim that the panel has made a "'misapplication of correct precedent to the facts of the case.'" *Gonzalez*,

773 F.2d at 641.[5] Similarly, the panel opinion does not involve "a precedent-setting error of exceptional public importance." As indicated, even if the panel erred (and it continues unanimously in the view that it did not), the error would at most amount to one of misapplication of precedent to the facts at hand, rather than establishing a new precedent of exceptional public importance. We recognize that the decision in this case, as opposed to the rules of law applied in the panel opinion, is of public importance because of the position of appellant, but we do not consider that appellant's position alone suffices to make the case appropriate for en banc consideration. *Cf. United States v. Claiborne*, 765 F.2d 784 (9th Cir.1985), 781 F.2d 1325, 1327, 1334 (9th Cir.1985, 1986) (dissenting opinions on denial of rehearing en banc), *cert. denied*, — U.S. —, 106 S.Ct. 1636, 90 L.Ed.2d 182 (1986); *United States v. Claiborne*, 790 F.2d 1355, 1356 (9th Cir.1986); *United States v. Isaacs*, 493 F.2d 1124, 1167–69 (7th Cir.), *cert. denied*, 417 U.S. 976, 94 S.Ct. 3184, 41 L.Ed.2d 1146 (1974). Accordingly, we do not deem the case an appropriate one for en banc consideration.

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[5] The panel continues unanimously in the view that no misapplication has been made.

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COMMITTEE EXHIBIT NO. 46

# Supreme Court of the United States

U.S. COURT OF APPEALS
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U.S. COURT OF APPEALS
FIFTH CIRCUIT
JAN 26 1988
CIRCUIT EXECUTIVE

No. 87-650

Walter L. Nixon, Jr.,
Petitioner
v.
United States

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Fifth Circuit, No. 86-4248.

ON CONSIDERATION of the petition for a writ of certiorari herein to the United States Court of Appeals for the Fifth Circuit.

IT IS ORDERED by this Court that the said petition be, and the same is hereby, denied.

January 19, 1988

A true copy JOSEPH F. SPANIOL, JR.
Test:
Clerk of the Supreme Court of the United States
By ______________________
Deputy

COMMITTEE EXHIBIT NO. 47

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
MAY 0- 1988
CLARENCE A. PIERCE, CLERK
BY ______ DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA, )
)
v. ) Criminal No. H85-00012(L)
)
WALTER L. NIXON, JR., )
)
Defendant )

## MOTION FOR REDUCTION OF SENTENCE

Defendant, by his undersigned counsel, hereby moves this Court, pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure as in effect at the time of his conviction and sentencing, [1] to reduce the sentence imposed on him for the following reasons, which are set forth more fully in the accompanying memorandum. Defendant has been incarcerated at Eglin Federal Prison Camp since March 23, 1988.

1. Defendant's sentence of five years in prison is disproportionately long, extending more than three times longer than the maximum sentence that would be imposed for his

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[1] Under Section 22 of the Sentencing Act of 1987, Pub. L. No. 100-182, 101 Stat. 1271, Congress extended the provisions of former Rule 35(b) to "all offenses committed before" the federal Sentencing Guidelines took effect on November 1, 1987. See Order of the United States Supreme Court of April 29, 1985, 471 U.S. 1169 (1985). The offenses in this case occurred on July 18, 1984. Accordingly, former Rule 35(b) applies to Nixon's case.

convictions under the federal Sentencing Guidelines that took effect on November 1, 1987;

2. In passing sentence initially, this Court also did not have the opportunity to consider sentencing alternatives. Defendant proposes in the accompanying materials that any sentence allow him to contribute meaningful service to his community, and he submits a specific proposal developed with the Catholic Diocese of Biloxi to assist in providing vitally needed services for the Emergency Assistance Program in Biloxi of Catholic Social and Community Services. Detention either in the federal halfway house in Pascagoula or some form of home detention would allow Nixon to provide these vitally needed volunteer services.

3. In passing sentence initially, the Court did not have a full opportunity to consider the defendant's personal situation. Defendant, his friends and colleagues have endeavored to bring those personal considerations to the Court's attention through letters to the Court that also are submitted with this Motion.

4. The nature of the offense must be appreciated fully in passing sentence. No judicial corruption or misconduct in office was involved. Indeed, in five federal circuits covering

twenty-six states, the charges on which Nixon was convicted could not, as a matter of law, have been submitted to the jury. [2]

Defendant also respectfully requests the opportunity to address these matters in a hearing before the Court. Sentencing is a matter of great significance, yet the hearing on the initial sentencing extended for only a few minutes. Defendant seeks an opportunity to make a full presentation on this subject.

Respectfully submitted,

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MICHAEL B. HOLLEMAN
BOYCE HOLLEMAN,
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ATTORNEYS FOR DEFENDANT

Date: May 2, 1988

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[2] We note that one of the Court's options on this Motion is to convert the current five-year sentence to a sentence with a minimum or maximum term, or with a maximum term alone, which would allow for greater flexibility in the parole release determination under 18 U.S.C. § 4205(b).

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
MAY 04 1988
CLARENCE A. PIERCE, CLERK
BY ________ DEPUTY

UNITED STATES OF AMERICA, )
)
v. ) Criminal No. H85-00012(L)
)
WALTER L. NIXON, JR., )
)
Defendant )

## MEMORANDUM IN SUPPORT OF MOTION TO REDUCE SENTENCE

Walter L. Nixon, Jr. came before this Court on March 31, 1986 for sentencing on two counts of making a false declaration in violation of 18 U.S.C. § 1623. Although Nixon's convictions did not relate to the sort of violent offense for which Congress has specified that incarceration is particularly appropriate, and although Nixon was acquitted on the only substantive charge against him, the Court imposed the extraordinarily severe sanction of five years imprisonment on each count, to run concurrently. Nixon has been incarcerated at Eglin Federal Prison Camp since March 23, 1988.

A motion to reduce sentence under Federal Rule of Criminal Procedure 35(b) [1] "is intended to give every convicted defendant a second round before the sentencing judge." United

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[1] See Section 22, Sentencing Act of 1987, Pub. L. No. 100-182, 101 Stat. 1271; Order of the United States Supreme Court of April 29, 1985, 471 U.S. 1169 (1985).

States v. Colvin, 644 F.2d 703, 705 (8th Cir. 1981). It serves "to allow the district court to decide if, on further reflection, the original sentence now seems unduly harsh." United States v. Maynard, 485 F.2d 247, 248 (9th Cir. 1973).

We submit that the following considerations justify substantial reduction of Nixon's sentence:

1. Under the federal Sentencing Guidelines in effect since November 1, 1987, the required sentence for Nixon's convictions would range between 10 and 16 months, less than one-third of the 60 months imposed. Reduction of Nixon's sentence is required by the congressional desire for uniform sentencing and by the congressional policy that prison resources not be consumed unnecessarily by those convicted of non-violent offenses.

2. Nixon proposes a sentencing alternative that would permit him to serve his community by working for the Emergency Assistance Program in Biloxi of Catholic Social and Community Services. While performing those services, Nixon may be detained in an appropriate facility, such as the federal halfway house in Pascagoula, Mississippi, or through a program of home detention. Such a course (i) would help meet a critical need, as Bishop Joseph Howze of the Catholic Diocese of Biloxi describes in his

letter of March 1, 1988 (Exhibit A); (ii) would permit the defendant to be of service to his community; (iii) would reduce the burden on the prison system of maintaining Nixon as a prisoner, especially in light of the security concerns that arise when a judge is incarcerated; (iv) would allow Nixon to remain closer to his family during his period of punishment; and (v) would satisfy any public interest in imposing public punishment on a prominent defendant.

3. Nixon's public ordeal through the investigation and trial of this case has been intense. His regret over his own errors and actions is expressed in an attached declaration (Exhibit B). Both he and his family have suffered greatly, but -- as we expect will be borne out by letters to the Court from private citizens -- for many years he has been a positive and contributing member of his community. Nixon's long public service, his distinguished record of professional achievement, and his devotion to the care and nurturing of seven children, deserve consideration by this Court, and militate in favor of a reduction of sentence.

4. The offenses for which Nixon has been convicted simply are not so heinous that five years in prison

is an appropriate penalty. Nixon was convicted for two misstatements that did not cover up corruption or malfeasance. The prosecutor in his closing argument conceded that any false declaration was "probably based more on pride than any corruption," and called the offenses "a disastrous decision by an otherwise fine judge." Indeed, in five federal circuits covering twenty-six states, Counts III and IV of the indictment could not, as a matter of law, have been submitted to the jury. In these circumstances, and even in view of Nixon's prominent public position, a five year prison term is totally disproportionate. [2]

## I.

## THE SENTENCING GUIDELINES PRESCRIBE IMPRISONMENT FOR TEN TO SIXTEEN MONTHS

Because the Federal Sentencing Guidelines did not take effect until after the offenses and sentencing in this case, they do not apply directly here. The Guidelines do, however, reflect the appropriate sentencing ranges and considerations that should govern those offenses. Indeed, one of Congress' primary purposes in authorizing the Guidelines was to promote greater uniformity in sentencing. See Federal Sentencing Guideline Manual, at 2 (October 1987) [hereinafter cited as "Manual"].

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[2] We note that this Court has the option of converting Nixon's sentence to one with a maximum and minimum term, or only with a maximum term, which would allow greater flexibility in the parole release determination under 18 U.S.C. § 4205(b).

Strikingly, even though the Guidelines are generally considered to provide for harsher treatment of "white-collar" offenders than prevailed previously, [3] for Nixon the Guidelines would require a sentence of only 10 to 16 months, less than one-third of the 60-month sentence imposed. This Court must consider carefully whether there is any basis in this case for such a drastic departure from the uniform sentencing policies prescribed by Congress.

### A. Application of the "Offense Conduct" Factors Results in an "Offense Level" of 12

The Guideline section for false declarations under 18 U.S.C. § 1623, is § 2J1.3 in the Manual. The base level for that offense is 12. Under § 3D1.2(b), that base offense level should not be increased because Nixon was convicted on two counts. The two counts involve testimony on the same date concerning essentially the same matters. Accordingly, the two counts should be grouped together under the Guidelines and the base offense level remains at 12. See Manual, at 186 (Commentary).

### B. No Enhancements Or Adjustments Are Proper Under The Guidelines

The base level for an offense may be enhanced or adjusted under some circumstances, but there is no basis for enhancement in this case.

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[3] See generally, Sentencing Guidelines Would Yield Fewer Guilty Pleas, 1 Inside Litigation 8, p. 1 (June 1987).

1. If perjury "substantially interfered with the administration of justice," the base level should be enhanced by three levels under § 2J1.3(b)(2). The Commentary explains that this enhancement applies when the perjury caused "premature or improper termination of a felony investigation, an indictment or verdict based upon perjury . . . or the unnecessary expenditure of substantial government or court resources." Manual, at 107. None of these criteria apply here.

Nixon's convictions relate to his testimony that he did not remember Bud Holmes discussing the "Drew Fairchild case" with him, and that he did not attempt to influence any official action about the Drew Fairchild case. That testimony caused neither termination of an investigation nor wrongful indictment or verdict. That testimony also did not cause "unnecessary expenditure" of funds. The theory of the investigation was the allegation that Nixon had received an illegal gratuity from Wiley Fairchild in the form of an oil investment. Both Nixon and Fairchild denied that allegation during the investigation and at Nixon's trial, and Nixon was acquitted on that charge. Different testimony by Nixon on the matters covered by the perjury convictions would not have altered the central investigation of the alleged gratuity.

2. Under § 2J1.3(c)(1) of the Guidelines, enhancement may be appropriate if the offense obstructed discovery of a substantive offense. Since Nixon was acquitted of the

substantive offense of receiving an illegal gratuity, no such enhancement would be proper here. Indeed, the prosecutor in closing argument stated that Nixon's testimony was based "more on pride than any corruption." Thus, even the government did not allege that Nixon's testimony was given to cover up illegal activity.

3. Under § 3B1.3 of the Guidelines, the base level for the offense may be adjusted if the offense involved the "abuse of a position of trust." As a District Judge, Nixon occupied a position of public trust, and some may believe his convictions reflect poorly on that trust. But that is not the point of this adjustment under the Sentencing Guidelines. This adjustment is appropriate only when the position of trust contributed "in some substantial way to facilitating the crime and not merely have provided an opportunity that could as easily been afforded to other persons." Manual, at 179. Nixon's position as a judge in no way facilitated the offenses of false declarations before the grand jury. All citizens potentially may be grand jury witnesses. Accordingly, this adjustment does not apply here.

4. The offense level may be reduced under the Guidelines if the defendant demonstrates "acceptance of responsibility" for the offenses. Although Nixon has accepted responsibility for his actions, as expressed in his attached Declaration (Exhibit B), he still does not agree that his grand jury testimony violated 18 U.S.C. § 1623. Accordingly, we claim no reduction of the offense level for this reason.

5. Because Nixon has no criminal record whatever, there is no adjustment under the Guidelines to reflect a criminal history.

C. The Sentencing Guidelines Prescribe a Sentence of 10 to 16 Months And Allow A Period Of Community Confinement

For the offense level of 12, the Guidelines specify a sentence of between 10 to 16 months. [4] Under § 5C2.1(d)(2) of the Guidelines, that term could be divided, with one-half of the time in imprisonment and one-half of the time in community confinement. This conclusion is consistent with the Sentencing Commission's policy statement that long prison terms should be avoided when non-violent offenses are involved. "The Commission's view is that the definite prospect of prison, though the term is short, will act as a significant deterrent to many of these crimes. . . ." Manual, at 9. [5]

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[4] Even if some enhancement of the offense level were applied -- say, to offense level 15-- Nixon's sentence still would only be in a range of 18 to 24 months under the Guidelines, far less than the 60 months imposed.

[5] In the only comparable situation in recent years, Judge Harry Claiborne of the District of Nevada was convicted on two counts of underreporting his income for federal tax purposes and was sentenced to two years in prison. 765 F.2d 784, 788 (9th Cir. 1985), cert. denied, 106 S.Ct. 1636 (1986).

## II.

## THIS COURT SHOULD IMPOSE AN ALTERNATIVE SENTENCE REQUIRING DETENTION IN A HALFWAY HOUSE AND SERVICE TO THE NEEDY

In this case, however, the Court is not controlled by the Sentencing Guidelines and can impose a more flexible and constructive sentence. [6] Under the proposal prepared with the Catholic Diocese of Biloxi, Nixon's period of imprisonment could be served in a halfway house facility that would allow Nixon to assist the church's Emergency Assistance Program for the needy on the Gulf Coast of Mississippi. This proposal merits serious consideration by the Court, as it would achieve the purposes of punishment and deterrence while still allowing the community to benefit from the energies and talents of a man who has devoted himself to public service for twenty years.

The materials submitted by Bishop Howze demonstrate that this proposal would meet a critical need in the Gulf Coast community. The Emergency Assistance Program serves 400 to 500 families every month, yet budget cutbacks soon will reduce its personnel to a single worker. In this context, Nixon's time of punishment can also be a time of contribution and service to his community. Such an outcome would benefit both the community and Walter Nixon. 7/

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[6] Indeed, Congress authorized "departures" from the Guidelines in sentencing to account for mitigating circumstances that are not sufficiently recognized in the Guidelines. 18 U.S.C. § 3553(b).

This course is strongly reinforced by the congressional policy announced in the Senate Resolution enacting the Comprehensive Crime Control Act of 1984, which applied to sentencing during the period of Nixon's offense and sentencing (Pub. L. No. 98-473, § 239, 98 Stat. 2039-2040 (1984), reprinted in 18 U.S.C.A. § 3551 historical note):

> Since, due to an impending crisis in prison overcrowding, available Federal prison space must be treated as a scarce resource in the sentencing of criminal defendants;
>
> Since, sentencing decisions should be designed to ensure that prison resources are, first and foremost, reserved for those violent and serious criminal offenders who pose the most dangerous threat to society;
>
> Since, in cases of non-violent and non-serious offenders, the interests of society as a whole as well as individual victims of crime can

---

7/ This course also would reduce the burden on the prison system for ensuring the security of Nixon while incarcerated, an issue which was noted in the initial presentence report. Although we are not aware of a specific potential threat to Nixon while in confinement, he has, of course, sentenced scores of defendants in his judicial career.

continue to be served through the imposition of alternative sentences, such as restitution and community service;

Since, in the two years preceding the enactment of sentencing guidelines, Federal sentencing practice should ensure that scarce prison resources are available to house violent and serious criminal offenders by the increased use of restitution, community service, and other alternative sentences in cases of non-violent and non-serious offenders: Now, therefore, be it

Declared, That it is the sense of the Senate that in the two years preceding the enactment of the sentencing guidelines, Federal judges, in determining the particular sentence to be imposed, consider --

(1) The nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the general appropriateness of imposing

a sentence other than imprisonment in cases in which the defendant has not been convicted of a crime of violence or otherwise serious offense; and

(3) the general appropriateness of imposing a sentence of imprisonment in cases in which the defendant has been convicted of a crime of violence or otherwise serious offense.

See 52 Fed. Reg. 34392 (Sept. 11, 1987) (statement by United States Parole Commission that Bureau of Prisons is "more than 50% over rated capacity" and that earlier release of non-violent offenders would ease the problem without endangering the community).

The appropriateness of the proposed alternative sentence is further reinforced by comparing the sentences imposed on the other figures in this federal investigation.

-- Bud Holmes, the former Forrest County District Attorney, was sentenced to one year and a $10,000 fine for contempt of court, but never served any time in prison because of an error in the sentence.

-- Wiley Fairchild pled guilty to paying an illegal gratuity and was sentenced to two years, with twenty-two months of the term suspended and the remaining 60 days served in a halfway house.

-- Drew Fairchild pled guilty to conspiracy to import marijuana and was sentenced to three years in prison, with all but six months suspended. He actually served four and one-half months in federal prison.

In this context, Nixon's sentence plainly should be reduced. Numerous courts have held that a sentence should be corrected under Rule 35 when there is a disparity in punishment between two participants who are equally culpable in a criminal venture, or when the less culpable participant is punished more severely than a more culpable participant. *See* *United States v. Busic*, 587 F.2d 577, 584 n.6 (3d Cir. 1978), *rev'd on other grounds*, 446 U.S. 398 (1980); *United States v. Del Toro*, 513 F.2d 656, 667 n.11 (2d Cir.), *cert. denied*, 423 U.S. 826 (1975); *United States v. Shope*, 509 F. Supp. 1170 (N.D. Ohio 1981); *United States v. Rubinson*, 426 F. Supp. 266 (S.D.N.Y. 1974); *United States v. Del Toro*, 405 F. Supp. 1163 (S.D.N.Y. 1975).

See United States v. McRoy, 452 F. Supp. 598, 604 (W.D. Mo. 1978) (reducing sentence based on "justice and the principle of avoidance of disparity between co-defendants who stand in the same relative situation").

Nixon's sentence is disproportionately harsh when compared to the other sentences in this investigation and to the Sentencing Guidelines that now apply, while it is inconsistent with the congressional policy for sentencing of non-violent, non-serious offenders. All of these factors support imposition of the proposed alternative sentence.

## III.

## THE SENTENCING DECISION MUST CONSIDER WALTER NIXON'S LIFETIME OF SERVICE AND THE ACQUITTAL OF ANY SUBSTANTIVE OFFENSE

The sentence in this case reflects little consideration for Walter Nixon as an individual who has devoted himself to public service, to his family and his community. Rather, the severity of the sentence suggests that it was imposed as a punishment on an abstraction -- the Chief Judge of the Southern District of Mississippi. We recognize that any sentencing decision must consider Nixon's public position at the time of the offenses, but we urge the Court also to consider his personal qualities.

Nixon has raised and nurtured a large family -- two children by his first marriage of over 20 years, four children from his current wife's first marriage, and a 10-year-old daughter from his current marriage. His devotion to his family -- and his participation in community and civic matters -- are described in many of the letters from private citizens sent to the Court on Nixon's behalf.

But the Court should also recognize that the public Walter Nixon -- The Chief Judge -- has an enviable record on the bench of fealty to the law and his duties. As George Saxson describes in his letter, Nixon's application of the civil rights laws to the Mississippi Highway Patrol was controversial locally, but has played a major role in integrating that force. Letters from both the Bench and the Bar describe Nixon's fairness to litigants and counsel, and his hard work on behalf of the federal justice system. Indeed, it should be stressed that nothing in the four counts of the indictment involved an allegation that Nixon had executed his judicial responsibilities improperly or corruptly.

## IV.

## THE NATURE OF NIXON'S OFFENSES MUST BE CONSIDERED

In this Motion, we do not deny the offenses. Nevertheless, we urge the Court to consider the nature of those offenses and to recognize that they were rooted in misunderstanding and frustration, not corrupt intent, as the prosecutor himself conceded at trial.

As Nixon testified at trial and as he reaffirms in the attached Declaration, he understood that the investigation concerned whether his investment with Wiley Fairchild was connected to efforts by him to block or divert to state officials the investigation of Wiley's son, Drew Fairchild. This understanding controlled the testimony that was the basis for both counts on which he was convicted. When asked if Bud Holmes had discussed the "Drew Fairchild case" with him (Count III), he replied that Holmes had not done so, misunderstanding the question to concern the federal investigation of Drew and the diversion of the federal case to state officials. When he spoke at the end of his grand jury appearance (Count IV), Nixon still had those allegations in mind when he denied trying to influence any official to assist Drew Fairchild.

The Supreme Court has held that an ambiguous response to a clear question cannot be the basis for a perjury conviction. Bronston v. United States, 409 U.S. 352 (1973). The Supreme Court has never decided whether a direct response to an ambiguous question can support a perjury conviction, and the lower courts are divided on the issue. Five federal circuits covering twenty-six states have held that, as a matter of law, a response to an ambiguous question cannot support a perjury conviction. United States v. Lighte, 782 F.2d 367, 376 (2d Cir. 1986); United States v. Slawik, 548 F.2d 75, 84-85 (3d Cir. 1977); United States v. Eddy, 737 F.2d 564, 570-71 (6th Cir. 1984); United States v. Sainz, 772 F.2d 5559, 562-64 (9th Cir. 1985); United States v.

Larranaga, 787 F.2d 489, 497 & n.2 (10th Cir. 1986). The Fifth Circuit, however, has taken a contrary view. United States v. Bell, 623 F.2d 1132, 1136 (5th Cir. 1980).

Consequently, the federal offenses on which Nixon stands convicted would not even be offenses in twenty-six states.

## CONCLUSION

For all of the foregoing reasons, defendant urges the Court to order a reduction in sentence, and seeks particularly the opportunity to participate in the Emergency Assistance Program of the Biloxi Diocese as part of any sentence. As noted in the Motion to Reduce Sentence, we seek the opportunity to address these issues in a hearing before the Court.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT

DATE: May 2, 1988

Catholic Diocese of Biloxi

P. O. BOX 1189

BILOXI, MISSISSIPPI 39533-1189

OFFICE OF
THE BISHOP

120 REYNOIR STREET
(601) 374-0220

March 1, 1988

United States District Court
Southern District of Mississippi

Recently Mr. Walter Nixon and his counsel approached me requesting my assistance relative to the possibility of a program of community service as part of Mr. Nixon's sentence. I now convey to the Court such a proposal.

Catholic Social and Community Services operates an Emergency Assistance Program, which is located at the Sacred Heart Center in Biloxi. This program provides critically needed assistance to the poor in our area; approximately 400-500 families per month. Recently this program has been staffed by individuals sponsored by the Federal VISTA program. At the present time the number of VISTA volunteers available is being radically reduced.

We are happy to place at the Court's disposal this program as a means of public service to the poor in the area as it considers Mr. Nixon's sentence. Mr. Nixon has been an active member of the St. Vincent de Paul Society at his local church. The St. Vincent de Paul Society is a charitable organization in many Catholic parishes. This experience would benefit him in working in the Emergency Assistance program.

I am enclosing a brief description of the position which Mr. Nixon would fill. I understand that the decision on a sentence is difficult and involves complex considerations. If the Court determines that some form of community service would be of benefit for Mr. Nixon, then the Emergency Assistance Program is available for his service to the community. It will definitely involve Mr. Nixon in a program beneficial to the poor in the Gulf Coast Community. It would also be beneficial to maintaining the services of the program as the reduction in VISTA volunteers will curtail the available services.

Sincerely yours in Christ,

+Joseph Lawson Howze

Most Reverend Joseph Lawson Howze, D.D.
Bishop of Biloxi

Enclosure

JLH/afg

Exhibit
A

Organization:

## CATHOLIC SOCIAL AND COMMUNITY SERVICES

Catholic Social and Community Services incorporates many varied responses to the needs of the local community.

Specific Area of Service:

## EMERGENCY ASSISTANCE PROGRAM

Over the past year this program worked with 400-500 families per month who were seeking assistance from CSCS. In the near future the available personnel resources available will be reduced significantly.

The service Mr. Nixon would be involved in includes offering direct assistance and counseling to families seeking assistance with food, utilities, rent. etc., when the resources are available through CSCS, and offering aid in securing assistance from other local charitable agencies in the area, such as St. Vincent de Paul Societies, Salvation Army, local churches, etc., when the resources of CSCS are depleted.

This outside contact with other agencies and groups is maintained through visits with these organizations and through telephone communication.

The program also includes assisting individuals or families access the legitimate resources available to them through state and federal welfare programs.

This work includes the accurate keeping of records to discourage the abuse of the services and financial assistance offered to the needy families.

Almost every month the resources available are not sufficient to meet the needs of the families requesting assistance.

## SUPERVISION

Mr. Nixon would be under the supervision of the Most Rev. Joseph L. Howze, D.D., Bishop of the Catholic Diocese of Biloxi, Msgr. Andrew Murray, Vicar General/ Chancellor, and Rev. George Murphy, Director of Catholic Social and Community Services.

In the unlikely event that this work was not sufficient to keep Mr. Nixon in a position of service to the poor and needy in the community, there are other areas of service sponsored by the Catholic Diocese of Biloxi.

## DECLARATION OF WALTER L. NIXON, JR.

Walter L. Nixon, Jr., of Ocean Springs, Mississippi, hereby makes the following declaration:

1. Over the last four years, I have gone through a lengthy grand jury investigation, trial, and conviction on two perjury counts. This experience has taken from me or injured much of what I hold most dear. My good name has been tarnished; my commitment to justice and my personal honesty have been called into question; I have been unable to serve my community as a judge, as I have been so very proud to do for many years; and my friends and family have had to suffer with me.

2. Through this long experience, I have learned several hard lessons that perhaps I should not have had to learn at my age. The financial investment I made with Mr. Wiley Fairchild -- although made in absolute good faith, with no expectation of corrupt gain -- resulted in unforeseen and untrue, yet damaging, suspicions to focus on my conduct.

3. I now realize that I might not have listened carefully enough to the questions that were asked me before the grand jury, because I was so frustrated and angered by the investigation itself. When I appeared before the grand jury in July 1984, I attempted to give truthful answers to every question that was asked. Based on statements to me by the prosecutor and an FBI agent in April 1984, I believed that the questions before the grand jury concerned allegations that, in return for my investment with Mr. Fairchild, I had somehow blocked federal prosecution of Drew Fairchild and/or helped "steer" Drew Fairchild's case from federal court to state court. I never

Exhibit
B

talked about that subject with anyone until this investigation started. As I testified at trial, at some point Wiley Fairchild did relate to me his complaint that "Bud" Holmes was "blackmailing" him in connection with a state prosecution of Mr. Fairchild's son. I later mentioned that complaint to Mr. Holmes. Before the grand jury, however, I never understood that those matters might have been responsive to the investigator's questions.

4. I now stand convicted on two perjury counts. I do not believe the verdicts are just. I regret that my above actions have caused pain to my family and others, including the Federal Judiciary. I assure the Court that I will never in the future permit this to happen again.

I declare under penalty of perjury that the foregoing is true and correct.

DATE: March 4, 1988

Walter L. Nixon Jr.
WALTER L. NIXON, JR.

**Exhibit B**

COMMITTEE EXHIBIT NO. 48

### MISSISSIPPI STATE BAR

v.

### Walter L. NIXON, Jr.

No. 231.

Supreme Court of Mississippi.

Sept. 24, 1986.

Action was brought by State Bar to suspend attorney from practice of law, following his conviction of perjury in federal court. The Supreme Court, Robertson, J., held that attorney's license to practice law was suspended.

License to practice suspended.

**1. Attorney and Client ⇐36(1), 49**

State Bar rules of discipline have as their primary object stewardship of license to practice law; all holders of licenses to practice law are subject to exclusive and inherent jurisdiction of Supreme Court, as well as proscriptions on conduct and penalties and procedures attendant on rule violations.

**2. Attorney and Client ⇐39**

Commission of perjury before grand jury or court under federal law is felony within meaning and contemplation of State Bar rules of discipline. 18 U.S.C.A. § 1623; State Bar Discipline Rule 6(a).

**3. States ⇐18.67**

Supreme Court's authority regarding license to practice law is not preempted by Federal Constitution, notwithstanding that licensed attorney may also be federal judge.

**4. Attorney and Client ⇐34**

Persons licensed to practice law are subject to bar discipline with respect to those licenses, notwithstanding that such individuals may hold judicial office; declining to follow *In re Proposed Disciplinary Action*, 103 So.2d 632 (Fla.);. *In re Investigation of Circuit Judge*, 93 So.2d 601 (Fla.).

**5. Attorney and Client ⇐48**

Attorney who is convicted of felony in federal court is not entitled to complain tribunal in license suspension proceeding. State Bar Discipline Rule 6(a).

**6. Attorney and Client ⇐47**

Attorney convicted of felony in federal court is not entitled to stay in state license suspension proceedings pending final disposition of federal case. State Bar Discipline Rule 6(a).

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Michael B. Martz, Jackson, for appellant.

William F. Goodman, Jr., Jackson, for appellee.

Before HAWKINS, P.J., and PRATHER and ROBERTSON, JJ.

ROBERTSON, Justice, for the Court:

Walter L. Nixon, Jr. of Biloxi, Mississippi, by virtue of the authority of the State of Mississippi, was licensed to practice law on March 11, 1952, a license he has held through and including this day. This license is the subject of the present bar disciplinary proceedings.

On July 26, 1968, Nixon formally assumed the office of United States District Judge, serving the Southern District of Mississippi. *See* 28 U.S.C. § 104(b). On September 24, 1982, he was elevated to the office of Chief Judge of the United States District Court for the Southern District of Mississippi, an office he now holds.

On February 9, 1986, Judge Nixon was convicted in the United States District Court of the Southern District of Mississippi of two counts of perjury in violation of Section 1623, Title 18, United States Code. Upon the jury's verdict, the District Court on March 31, 1986, entered a final judgment of conviction and imposed sentence. The matter is presently pending before the United States Court of Appeals for the Fifth Circuit upon Nixon's appeal.

On April 18, 1986, the Mississippi State Bar filed its formal complaint urging that by reason of the aforesaid conviction

Judge Nixon be stripped of his license to practice law in the State of Mississippi. In due course Judge Nixon answered the complaint and has filed motions to dismiss asserting, among other reasons, want of jurisdiction, and, in the alternative, for an indefinite suspension of these proceedings pending appeal. These matters are here this day for our consideration and decision.

[1] The Rules of Discipline for the Mississippi State Bar heretofore adopted by this Court, effective January 1, 1984, have as their primary object stewardship of the license to practice law in this state. All holders of such licenses are by virtue thereof subject to the exclusive and inherent jurisdiction of this Court, *see Mississippi State Bar v. Phillips*, 385 So.2d 943, 944 (Miss.1980); *Matter of Mississippi State Bar*, 361 So.2d 503, 505 (Miss.1978), as well as the proscriptions on conduct and penalties and procedures attendant upon violations of same, all as set forth in the Rules of Discipline.

[2] The Bar's complaint is predicated upon Rule 6(a) of the Rules of Discipline. That rule provides, in pertinent part, as follows:

> Whenever any attorney subject to the disciplinary jurisdiction of the Court shall be convicted ... in any federal court, ... of any felony ... or of any misdemeanor involving fraud, dishonesty, misrepresentation, deceit, or willful failure to account for money or property of a client, a certified copy of the judgment of conviction shall be presented to the Court by Complaint Counsel and shall be conclusive evidence thereof. The Court shall then forthwith strike the name of the attorney and order his immediate suspension from the practice of law.

The Mississippi State Bar has presented to this Court a certified copy of the aforesaid judgment of conviction entered March 31, 1986, adjudging Walter L. Nixon, Jr., guilty of two counts of perjury in violation of 18 U.S.C. § 1623. This Judgment reflects a conviction in a federal court. Perjury under 18 U.S.C. § 1623 is a felony within the meaning and contemplation of Rule 6(a). *See Matter of Sweeney*, 96 A.D.2d 579, 467 N.Y.S.2d 585, 586 (1983); *In Re Ruggiero*, 40 A.D.2d 135, 338 N.Y.S.2d 749, 750 (1972). Even if the offense might arguably be considered a misdemeanor, it is certainly one involving "dishonesty, misrepresentation, and deceit." *See Matter of Meisnere*, 471 A.2d 269–70 (D.C.Cir.1984). The rule is satisfied. We do not look behind the District Court's judgment of conviction. Both Rule 6(a) and elementary notions of full faith and credit require acceptance here of the validity and propriety of that judgment. *See Mississippi State Bar v. Phillips*, 385 So.2d 943, 945–46 (Miss.1980).

Notwithstanding the foregoing, Judge Nixon presents a variety of reasons why we should dismiss the present proceedings or at least stay our hand until final adjudication on appeal of the federal criminal proceedings against him.

[3] First, Nixon argues that, because he is a United States District Judge, any authority this Court might otherwise have by virtue of his license to practice law is preempted by Articles I and III of the Constitution of the United States. The argument, earnestly pressed, invokes considerations fundamental to the nature of our federal republic. We do not transgress upon federal turf when we limit our action to the license the State of Mississippi has issued Nixon. What importance the federal sovereign may attach to whether Nixon holds from this state a license to practice law is a matter of federal law beyond our authority and concern, and so of the question what action, if any, federal authorities may take upon our suspension of Nixon's license to practice law.

Nixon argues that suspension of his license would be a vain and futile act. He relies upon the record which reflects that he is not practicing law at this time and that he has not practiced law since July 26, 1968, the date he assumed the office of United States District Judge. He is prohibited from practicing law by virtue of federal law. *See* 28 U.S.C. § 454; *Audett v.*

*United States*, 265 F.2d 837, 840 (9th Cir. 1959). The argument is wide of the mark.

By virtue of its inherent and exclusive jurisdiction, presently implemented via the Rules of Discipline for the Mississippi State Bar, this Court has authority with respect to all holding licenses to practice law in this state. *Smith v. Mississippi State Bar*, 475 So.2d 148, 149 (Miss.1985). Indeed, in the first sentence of our Rules of Discipline we have stated that

> the license to practice law in this state is a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the court.

It is of no consequence that Judge Nixon in his judicial capacity may be subject to other law regarding the conduct of his office, his possible suspension from same, or discipline in connection therewith. He holds from this state a license to practice law and by virtue thereof is subject to the Rules of Discipline. Such a view is the product of faithful construction and application of the law of this state.

[4] The overwhelming majority of our sister states take a similar view that persons licensed to practice law are subject to bar discipline with respect to those licenses notwithstanding that such individuals may hold judicial office. *See Gordon v. Clinkscales*, 215 Ga. 843, 845, 114 S.E.2d 15, 18–19 (1960); *In Re Alonzo*, 284 Ala. 183, 223 So.2d 585, 592 (1969); *Matter of Riley*, 142 Ariz. 604, 691 P.2d 695, 698–99 (1984); *In Re Mills*, 539 S.W.2d 447, 449–50 (Mo.1976); *Jenkins v. Oregon State Bar*, 241 Or. 283, 405 P.2d 525, 527–28 (1965); *In Re Mattera*, 34 N.J. 259, 265–70, 168 A.2d 38, 41–44 (1961); *Louisiana State Bar Association v. Funderburk*, 284 So.2d 564, 566 (La.1973); *see also* cases cited in Annotation, *Misconduct In Capacity As Judge As Basis For Disciplinary Action Against Attorney*, 57 A.L.R.3d 1150 (1974). That Florida or any other state may take a different view, *e.g., In Re Proposed Disciplinary Action*, 103 So.2d 632 (Fla.1958); *In Re Investigation of Circuit Judge*, 93 So.2d 601 (Fla.1957) suggests only that the law of that state is different from the law of Mississippi.

In the alternative, Judge Nixon objects to the somewhat summary proceedings authorized by Rule 6 and, instead, urges the formation of a complaint tribunal to hear and determine the matter. To be sure, most bar disciplinary matters are heard by a complaint tribunal in accordance with Rule 8 of the Rules of Discipline. Proceedings when one subject to the disciplinary jurisdiction of the court has been convicted of a crime such as that involved here, however, are excepted from Rule 8 and instead are governed by Rule 6. The reason for this is the rather obvious one that a complaint tribunal hears matters involving disputes regarding questions of fact. Even though the ultimate decision in such matters is for this Court, *see Levi v. Mississippi State Bar*, 436 So.2d 781, 782–83 (Miss. 1983), we regard it of immeasurable benefit that the complaint tribunal conducts a factual hearing and submits to us proposed findings of fact and a proposed judgment. *See* Rule 8(b). By way of contrast, today's proceedings are upon a factual record which is documentary in nature and where our function is merely the correct ascertainment of and application of the law to the uncontradicted facts.

[5] Nothing in *Mississippi State Bar v. A Mississippi Attorney*, 437 So.2d 1227 (Miss.1983) is to the contrary. In that case the Court ordered designation of a complaint tribunal where the Bar proceeded on the basis of an attorney's previous conviction of "constructive criminal contempt," a crime not within the ambit of the statutory precursor to Rule 6(a). Development of a factual record was there necessary and appropriate. In the case at bar no such factual inquiry need be made. The application for a complaint tribunal is denied.

[6] Finally, Judge Nixon argues, in the alternative, that these proceedings should be stayed pending final disposition of his appeal before the United States Court of

Appeals for the Fifth Circuit. Rule 6 is quite clear in providing that no such stay shall be allowed. Upon our determination that one subject to the disciplinary jurisdiction of this Court has been convicted of an offense within the meaning and contemplation of Rule 6(a), and upon the filing of a certified copy of the judgment of conviction with the Clerk of this Court, Rule 6(a) directs that we shall

> strike the name of the attorney and order his immediate suspension from the practice of law.

We note that Rule 6(b) provides that the attorney shall be immediately reinstated if the conviction should be reversed upon appeal. In any event, by virtue of the clear language of Rule 6(a), we deny the motion for stay.

In summary and in conclusion, we hold this day that all of the substantive and procedural requisites of Rule 6(a), Rules of Discipline for the Mississippi State Bar, have been met. The license issued by the State of Mississippi to Walter L. Nixon, Jr., authorizing his practice of law shall be, and the same hereby is, suspended, effective the date this opinion is released.

LICENSE TO PRACTICE LAW SUSPENDED.

HAWKINS, P.J., and DAN M. LEE, PRATHER and ANDERSON, JJ., concur.

WALKER, C.J., ROY NOBLE LEE, P.J., and SULLIVAN and GRIFFIN, JJ., not participating.

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## SHELL WESTERN E & P, INC., et al

v.

J.B. ROBINSON.

No. [illegible].

Supreme Court of Mississippi.

Oct. 1, 1986.

Appeal from Chancery Court, Amite County; R.B. Reeves, Chancellor.

Judith Y. Robertson, New Orleans, La., for appellants.

John H. White, Jr., Bert Jones, McComb, for appellee.

Before HAWKINS, P.J., and DAN M. LEE and SULLIVAN, JJ.

AFFIRMED.

COMMITTEE EXHIBIT NO. 49

The Clarion
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Volume 151 No. 250
6 sections 56 pages
Ledger
THURSDAY
JACKSON, MISSISSIPPI
January 21, 1988

# Judge Nixon refuses to resign, vows to fight impeachment

By DEAN SOLOV
Clarion-Ledger Staff Writer

BILOXI — U.S. District Judge Walter L. Nixon Jr. said Wednesday he won't resign despite his perjury conviction and vowed to fight impeachment while seeking a new trial.

"I have committed no crime, and I will continue to seek justice," said Nixon, reading from a 2½-page prepared statement at the Biloxi-Hilton Hotel.

Nixon, sentenced nearly two years ago to a five-year prison term, broke silence on his conviction at a noon news conference one day after the U.S. Supreme Court announced it wouldn't review his appeal.

Nixon, 59, of Ocean Springs surrendered his judicial and administrative duties after a federal jury found him guilty Feb. 9, 1986. He has continued to draw his salary, which has increased from $76,000 to $89,500 annually. Because he won't resign, he will continue to draw the salary unless he is impeached by the U.S. Senate.

"I have committed no crime, and I will continue to seek justice."
— Judge Walter Nixon

Nixon answered no questions during or following the 35-minute news conference.

His attorney, Boyce Holleman of Gulfport, spoke for the judge when Nixon was asked how he could, in good conscience, continue to accept his salary when he is not performing his duties.

"He has decided, and I agree with him, that he was wrongfully convicted and that the same Constitution which gives you the right to ask that question says that he shall not be denied that (salary) until the Congress has impeached him," Holleman said.

Nixon read calmly from the statement for seven minutes.

"If impeachment proceedings are instituted," Nixon said, "I intend to seek, in that forum provided by the United States Constitution, a full and fair hearing of all the evidence which precipitated these charges, as well as the motivation of the prosecutors.

"Congress has the right and the responsibility to consider all the circumstances surrounding my case to determine whether I have been treated unfairly and unjustifiably prosecuted," Nixon said. "My resignation would foreclose that right. Therefore, I shall not resign."

After completing the prepared statement, Nixon thanked those who have supported him and his family.

"We ask for your prayers in our continued pursuit of justice," he said before stepping back next to his wife, Barbara, and turning the news conference over to his attorneys.

Nixon has been a federal judge since 1968 and became the chief judge for Mississippi's Southern District in 1982. He's the third federal judge ever indicted for allegedly committing crimes while in office. Former chief U.S. District Judge Harry Claiborne of Nevada, convicted in 1984 of failing to report $106,000 on his federal income tax returns, was impeached by the Senate on Oct. 9, 1986, after being jailed.

U.S. District Judge Alcee Hastings of Florida was acquitted of bribery in 1983.

Nixon was found guilty of lying twice to a special federal grand jury in a voluntary appearance in July 1984. He was

See Nixon, back page this section

# Nixon

## Nixon dates

■ **Aug. 29, 1985:** Nixon is indicted by a grand jury on three counts of perjury and one count of accepting an illegal gratuity. He pleads innocent to all counts.

■ **Jan. 21, 1986:** Nixon's trial begins.

■ **Feb. 9, 1986:** Nixon is found guilty of twice lying to a special federal grand jury. He is found innocent of the other two counts.

■ **March 31, 1986:** U.S. District Judge James Meredith of St. Louis sentences Nixon to two five-year prison terms, to be served concurrently.

■ **Dec. 4, 1986:** Nixon argues appeal to the 5th U.S. Circuit Court of Appeals in New Orleans. Court rejects appeal on April 30, 1987, and denies request for rehearing Sept. 8, 1987.

■ **Oct. 21, 1987:** Nixon appeals his case to the U.S. Supreme Court.

■ **Jan. 19, 1988:** U.S. Supreme Court announces it won't act on Nixon appeal.

convicted of perjury for denying he discussed a drug case involving the son of a Hattiesburg businessman with Bud Holmes, then Forrest County district attorney, and for denying his involvement in or influence in the case. Nixon and his attorneys have maintained the grand jury questions were ambiguous.

The jury found him innocent of a corruption charge and one perjury charge.

After Tuesday's Supreme Court action, the U.S. Department of Justice said that within 60 days it will ask U.S. District Judge James Meredith of St. Louis to set a date for Nixon to report to prison. Meredith presided over Nixon's jury trial.

Holleman said Nixon will seek a new trial in U.S. District Court because of evidence gathered after the initial trial was concluded. The attorney said the evidence could not be introduced during the appeals process.

Holleman said the evidence shows Nixon was the victim of a government vendetta because he ruled against the government in a Birmingham case Nixon was called to hear after another judge disqualified himself.

"We feel very strongly that if Judge Nixon had not been called upon to pass upon the Petit Bois case, we would not be here today," Holleman said.

The 1981 Petit Bois trial was a condemnation case in which the U.S. government sought Petit Bois Island, a barrier island 10 miles south of Pascagoula.

The government had offered $386,000 for the property. Nixon ordered the federal government to pay $6.12 million for the island, which its owners planned to develop. The figure increased to $8.8 million with interest.

The owners, John R. Steele and A. Eugene Lewis, both of Florida, were indicted Oct. 31, 1985, for allegedly withholding information about terms of sales contracts on lots on the island. Both were acquitted.

Steele bought the island for $100 in cash and a $1.7 million promissory note to be paid off as lots on the island were sold.

Nixon's attorneys presented their evidence to the media, passing out copies of documents they say shows Nixon was targeted by federal prosecutors. Holleman said the motion for a new trial will be filed in two or three weeks in U.S. District Court in Hattiesburg.

The papers included a Feb. 2, 1987, letter Steele wrote a federal judge in Tallahassee, Fla. In the letter, Steele said he believed the "government went after Judge Nixon because he had the courage to rule in my favor. . . ."

"The government offered me immunity, or a free walk from criminal prosecution, if I would testify against Judge Nixon to the effect that he took a bribe for his ruling," Steele wrote.

Holleman said, "After reviewing the record, I don't believe that any fair-minded trial jury would have convicted Judge Nixon if they had had the information which I am now giving you."

"Jurors do not like governmental overreaching, and once you show them that the government is mistaken and is overreaching," Holleman said, "they react very strongly the other way."

COMMITTEE EXHIBIT NO. 50

JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

L. RALPH MECHAM
Secretary

## CERTIFICATE

TO THE SPEAKER, UNITED HOUSE OF REPRESENTATIVES:

The Judicial Conference of the United States, acting pursuant to section 331 of title 28, United States Code, does hereby certify as follows:

1. On February 11, 1988, the Judicial Council of the Fifth Circuit certified to the Judicial Conference, as provided by 28 U.S.C. § 372(c)(7)(B), that United States District Judge Walter L. Nixon, Jr., of the Southern District of Mississippi has engaged in conduct which might constitute one or more grounds for impeachment under Article I of the United States Constitution.

2. The Judicial Conference has excercised its authority under 28 U.S.C. § 372(c)(8) to consider the certificate of the Judicial Council of the Fifth Circuit. In so doing, the Judicial Conference had before it certified official records of judicial proceedings manifesting as follows:

> On March 31, 1986, Judge Nixon was convicted of two counts of violating section 1623 of title 18, United States Code.
>
> On January 19, 1988, Judge Nixon's conviction became final upon denial of a petition for writ of certiorari by the Supreme Court of the United States.

3. Pursuant to Rule 1 of the Rules for Processing of Certificates from Judicial Councils that a Judicial Officer Might Have Engaged in Impeachable Conduct, the Judicial Conference considers no additional investigation by the Conference itself to be appropriate. It is apparent that the certification by the Judicial Council is premised entirely upon a judgment of conviction in a criminal case and that the judgment has become final. As provided in 28 U.S.C. § 372(c)(8), the Judicial Conference concurs in the determination of the Judicial Council that Judge Nixon has engaged in conduct which might constitute one or more grounds for impeachment under Article I of the Constitution.

4. Consideration of the impeachment of Judge Nixon may be warranted.

There are attached the certificate of the Judicial Council of the Fifth Circuit to the Judicial Conference, a letter, dated February 26, 1988, to the Judicial Conference of the United States from the Acting Chief Judge of the Fifth Circuit, and certified copies of the judgment and commitment order of the United States District Court for the Southern District of Mississippi entered on March 31, 1986; the judgment of the United States Court of Appeals of the Fifth Circuit on April 30, 1987, affirming the judgment of the District Court, supported by opinions issued on April 30, 1987, affirming the judgment and on September 8, 1987, denying Judge Nixon's petition for rehearing and suggestion for rehearing en banc; and an order of the Supreme Court of the United States, dated January 19, 1988, denying the petition for writ of certiroari filed by Judge Nixon.

Executed this 15th day of March, 1988.

L. Ralph Mecham*
Secretary

---

*The Chief Justice and Judge Charles Clark were not present and did not participate in the deliberations of the Judicial Conference with respect to the subject matter of this certificate. Judge L. T. Senter, Jr., though present, did not participate.

## THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

Before GEE, REAVLEY, KING, GARWOOD, DAVIS, JONES and SMITH, Circuit Judges, and JUSTICE, MAHON, SHAW, HUDSPETH, POLOZOLA and DAVIDSON, District Judges.

IN RE: Walter L. Nixon, Jr.
United States District Judge
Southern District of Mississippi

Pursuant to Title 28, Section 372(c)(7)(B), the Judicial Council of the Fifth Circuit, based on (i) the court record in Case No. CR-H-85-00012(L) filed in the Southern District of Mississippi at Hattiesburg; (ii) the enclosed opinions of the United States of America, Appellee, versus Walter L. Nixon, Jr., Appellant; and (iii) the enclosed notice from the Supreme Court of the United States of the denial of the petition for writ of certiorari filed on October 21, 1987 in Case No. 87-650; has determined that Walter L. Nixon, Jr., a United States District Judge for the Southern District of Mississippi, has engaged in conduct which might constitute one or more grounds for impeachment under Article I of the Constitution, and so certifies its determination to the Judicial Conference of the United States.

Thomas Gibbs Gee
THOMAS GIBBS GEE
For the Council

Dated:

February 11, 1988

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*Chief Judge Clark, Circuit Judges Rubin, Politz, Johnson, Williams, Jolly, Higginbotham, and District Judges [illegible] Jr., Schwartz and Lee stood recused and did not participate in this Judicial Council action.

# INDEX

District Court's Docket Sheet in Criminal Case No. H85-00012(L)

District Court's Judgment entered on March 31, 1986 in Criminal Case No. H85-00012(L)

District Court's Order Denying Defendant's Motion for Judgment of Acquittal and Motion for a New Trial filed April 1, 1986 in Criminal Case No. H85-00012(L)

District Court's Memorandum of Law filed April 14, 1986 in Criminal Case No. H85-00012(L)

Opinion of the United States Court of Appeals, Fifth Circuit, dated April 30, 1987, in Case No. 86-4248, Affirming the Judgment of the District Court

Opinion of the United States Court of Appeals, Fifth Circuit, dated September 8, 1987, in Case No. 86-4248, Denying Appellant's Petition for Rehearing and Suggestion for Rehearing

Denial of the Petition for Writ of Certiorari by the Supreme Court of the United States on January 19, 1988 in Case No. 87-650

COMMITTEE EXHIBIT NO. 51

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
Telephone: 202-225-3951

March 18, 1988

Honorable Walter L. Nixon, Jr.
1204 Iola Road
Ocean Springs, Mississippi 39564

Dear Judge Nixon:

On March 15, 1988, the Judicial Conference of the United States certified to the Speaker of the House of Representatives that you engaged in conduct which might constitute one or more grounds for impeachment under Article 1 of the Constitution. The Speaker of the House of Representatives referred the Judicial Conference certificate to the Committee on the Judiciary on March 16, 1988. The certificate has been referred to the Judiciary Subcommittee on Civil and Constitutional Rights. On March 17, 1988, H. Res. 407, to impeach you for high crimes and misdemeanors was introduced in the House of Representatives and referred to the House Committee on the Judiciary.

This is to advise you that the House Judiciary Subcommittee on Civil and Constitutional Rights will be meeting in the near future to review sworn testimony on H. Res. 407. You will be notified in advance of the specific date of that hearing and will be granted the opportunity to appear personally or through counsel at that time.

Sincerely,

Peter W R

PETER W. RODINO, JR.
Chairman

cc: David Stewart, Esquire
Enclosure (H. Res. 407)

# COMMITTEE EXHIBIT NO. 52

- 0865 . 4 . 6508X

District Off. Judge Magis.

01 No. of Def. U.S. MAG. CASE NO.

I CHARGES

| U.S. TITLE SECTION | OFFENSES CHARGED | ORIGINAL COUNTS |
|---|---|---|
| 18 USC 201(g) | Gratuity | 1 |
| 18 USC 1623 | Perjury | |

SUPERSEDING COUNTS ☐ JURY ☐ N.J.

II KEY DATE

| | | |
|---|---|---|
| 08 29 85 | XX 08 29 85 | XX 1 20 86 |

| 1st appears with or waives counsel | ARRAIGNMENT | 1st Trial Ended | RE TRIAL | 2nd Trial Began | DISPOSITION DATE | SENTENCE DATE |
|---|---|---|---|---|---|---|
| 8-29-85 | 8-29-85 | 02 09 86 | | | | |

FINAL CHARGES DISMISSED ☐ on S.T. grounds ☐ W.P. ☐ DWOP

III MAGISTRATE

| | DATE | INITIAL NO |
|---|---|---|
| Search Warrant Issued | | |
| Return | | |
| Summons Issued | | |
| Served | | |
| Arrest Warrant Issued | | |
| COMPLAINT ▶ | | |

Date of Arrest OFFENSE (In Complaint)

INITIAL APPEARANCE DATE ▶

PRELIMINARY EXAMINATION OR REMOVAL HEARING Date Scheduled ▶ Date Held ▶

☐ WAIVED ☐ NOT WAIVED Tape Number

☐ INTERVENING INDICTMENT

INITIAL NO

OUTCOME

☐ DISMISSED

☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT

☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

Show last names and suffix numbers of other defendants on same indictment information

RULE ☐ ☐ ☐ : ☐ ☐

20 21 40 In Out

ATTORNEYS

U.S. Attorney or Asst. (202) 724-6974

Reid H. Weingarten-Jan Little

Trial Attorney

Public Integrity Section

Add. Cont.

P. O. BOX 50168

Public Integrity Section

Criminal Division

Department of Justice

Washington, D. C. [illegible]-0168

(202) 724-6974/724-7061

Defense 1 ☐ CJA 2 ■ Ret. 3 ☐ Waived 4 ☐ Self 5 ☐

S.

Michael/Fawer

Herbert V. Lawson Popham &

Fawer, XXXXXX Hardy,/Zatzkis

700 Camp Street

New Orleans, LA . 70130

(504) 528-9500

A TRUE COPY, I HEREBY CERTIFY,

[illegible], CLERK.

By: L. Dulue

Deputy Clerk

BAIL • RELEASE

PRE INDICTMENT

Release Date

☐ Bail Denied ☐ Fugitive ☐ Pers. Rec. ☐ PSA

AMOUNT SET $

Date Set

Conditions ☐ 10% Dep. ☐ Surety Bnd. ☐ Collateral ☐ 3rd Prty ☐ Other

Bail Not Made

Date Bond Made

POST INDICTMENT

Release Date

☐ Bail Denied ☐ Fugitive ☐ Pers. Rec. ☐ PSA

AMOUNT SET $

Date Set

Conditions ☐ 10% Dep. ☐ Surety Bnd. ☐ Collateral ☐ 3rd Prty ☐ Other

Bail Not Made

Date Bond Made

NAMES & ADDRESSES OF ATTORNEYS SURETIES ETC.

U. S. Court House and Custom House St. Louis, Missouri 63101

FINE AND RESTITUTION PAYMENTS

Docket Entries Begin On Reverse Side

| DATE | RECEIPT NUMBER | C.D. NUMBER | DATE | RECEIPT NUMBER | C.D. NUMBER |
|---|---|---|---|---|---|
| | | | | | |

APPEALS FEE PAYMENTS

## V. PROCEEDINGS

| | |
|---|---|
| 08 29 85 | Indictment, filed. |
| 08 29 85 | Grand Jury Return, filed. |
| [illegible]-04-85 | Minute Entry: Arraignment on 8-29-85 before Judge Parker. Deft. waived reading of indict. and enteres a plea of NG to Cts. I through IV. Deft. rel. on pers. recogn., filed. |
| 9-16-85 | NOTICE of Appearance of Attys., Reid H. Weingarten and Jan Nielsen Little w/cert. of serv., filed. |
| 9-16-85 | Government's MOTION for a Sequestered Jury w/attachments and cert. of serv., filed. |
| 9-16-85 | APPENDIX to Government's Motion for a Sequestered Jury, filed. |
| 10-15-85 | ORDER: Trial set for 1-21-86 at 8:00 a.m. in H'burg. Deft. and Gov't. shall file all motions on or before 11-8-85. Deft. and Gov't. shall file all responses before 11-29-85. Motions will be heard in St. Louis on 12-6-85 at 10:00 a.m. Other motions may be filed after 11-8-85 by leave of ct. Time from 9-16-85 until all motions have been disposed of shall be excluded from tim calculated under Speedy Trial Act. Deft. and Gov't. shall submit to ct. the proposed jury charge and proposed voir dire if parties propose that the court question the jury on or before 1-13-86. Lawyers shall meet with ct. on 1-20-86 at 10:00 a.m. for purpose of disposing of all final matters necessary before trial, filed and entered in OB 1985, Pages 3372 and 3373. (JLM) Copies mailed to Attys. of Record. |
| 10-21-85 | Government's Opposition to Deft's. Motion to Transfer w/certification & cert. of serv. and proposed order, filed. |
| 10-28-85 | Motion and Incorporated Memorandum to Fix a Trial Date Beyond the Norman Time Limitations of 18 USC, 3161, et seq; and Waiver of Rights Under Said Act, filed. |
| 10-28-85 | STIPULATED ORDER: (1) Parties agree material shall not be disclosed to third parties except as is necessary to prepare for trial. (2) Parties agree that such material shall not be copied except as is necessary to prepare for trial of this matter. (3) Parties shall return to opposing counsel the originals and all copies of such documents, writings, and other materials. (4) This stipulated order shall have the same force and effect as a protective order entered Rule 16(d)(1) of FRCP. Parties reserve right to seek modification of this order upon proper notice and application, filed and entered in OB 1985, Pages 3438-39. (JHM) Copies mailed to Attys. of Record. |
| 10-28-85 | ORDER: Jury shall be sequestered as soon as it is selected, filed and entered in OB 1985, Page 3440. Copies mailed to Attys. of Record. |
| 11-7-85 | Gov't's, MOTION for Reciprocal Discovery w/cert. of serv., filed. |

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U.S. vs NIXON, WALTER L., JR.

85 00012(L)
Yr. Docket No.

V. EXCLUDABL
(a) (b)

| DATE | PROCEEDINGS (continued)<br>(Document No.) |
|---|---|
| 11-7-85 | Supplemental Memorandum In Support of Defendant's Motion to Fix the Place of Trial Within the Southern Dist. of MS w/ cert. of serv. and Attached Affidavit, filed. |
| 11-8-85 | Motion for A Bill of Particulars w/cert. of serv., filed. |
| 11-8-85 | Memorandum In Support of Motion for Bill of Particulars, filed. |
| 11-8-85 | Motion for Discovery of Electronic Surveillance w/cert. of serv., filed. |
| 11-8-85 | Memorandum In Support of Motion for Discovery of Electronic Surveillance, filed. |
| 11-8-85 | Motion for Pre-Trial Disclosure of All Evidence Which the Government Intends to Offer Pursuant to Rule 404(b) of the Federal Rules of Evidence w/cert. of serv., filed. |
| 11-8-85 | Memorandum In Support of Motion for Pre-Trial Disclosure of All Disclosure of All Evidence which the Government Intends to Offer Pursuant to Rule 404(b) of the Fed. Rules of Evidence, filed. |
| 11-8-85 | Motion and Incorporated Memorandum for Discovery and Inspection w/cert. of serv., filed. |
| 11-8-85 | Motion for Production of Exculpatory Evidence and for Disclosure of Impeaching Evidence w/cert. of serv., filed. |
| 11-8-85 | Memorandum In Support of Motion for Production of Exculpatory Evidence and for Disclosure of Impeaching Evidence, filed. |
| 11-8-85 | (Copy)<br>Joint Motion to Include in the Court Record of this matter all legal Memoranda and Affidavits Filed by either party w/ proposed order, filed. |
| 11-12-85 | ORDER: Deft's. Motion to fix place of trial in Biloxi pursuant to Rule 18 of F.R.C.P. is denied, filed and entered in OB 1985, Page 3541. (JHM) Copies of Order mailed to Attys. of Record. |
| 11-12-85 | Memorandum In Support of Order denying motion to fix place of trial in Biloxi, filed. |
| 11-15-85 | Joint Motion to Include in Court Record of this matter all legal Memoranda and Affidavits Filed by Either Party, filed. |
| 11-15-85 | ORDER: Pat Suber, DC, make part of official court record of matter all memoranda and affidavits filed by either party, filed and entered in OB 1985, Page 3582. (JHM) Copies mailed to counsel. |

Interval (per Section II) | Start Date End Date | Ltr. Code

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

UNITED STATES OF AMERICA V. WALTER L. NIXON, JR.

| DATE | PROCEEDINGS (continued)<br>(Document No.) | V. EXCLUDABLE DELAY<br>(a) (b) (c) |
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| 11-27-85 | ORDER: Government's Motion for Reciprocal Discovery is granted in all respects. Deft. disclose to Gov't. all evidence and info described in Rule 16(b) and (c) F.R.C.P. and Deft. shall provide the Gov't. with witness statements pursuant to Rule 26.2, F.R.C.P. at time that the gov't. provides witness statements to Deft. pursuant to 18 U.S.C. 3500, filed and entered in OB 1985, Page 3647. (JHM)<br>Copies of order mailed to Attys. of Record. | |
| 12-02-85 | Gov't's. Answer to Deft's. Motion for Discovery w/cert. of serv., filed. | |
| 12-02-85 | Gov'ts. Response to Deft's. Motion for Production of Exculpatory Evidence and for Disclosure of Impeaching Evidence w/cert. of serv., filed. | |
| 12-02-85 | Gov't. Response to Deft's. Motion for Bill of Particulars w/cert. of serv., filed. | |
| 12-02-85 | Gov't. Response to Deft's. Motion for Pre-Trial Disclosure of 404(B) Evidence w/cert. of serv., filed. | |
| 12-02-85 | Gov't. Response to Motion for Discovery of Electronic Surveillance w/cert. of serv., filed. | |
| *<br>10-14-85 | Honorable James H. Meredith, Senior U. S. District Judge for Eastern District of Missouri has been designated to hold a District Court in Southern District of MS in re: United States v. Walter L. Nixon, Jr., No. H85-00012. Filed 10/14/85 H'burg. OB 1985, Page 3368. Card placed in index. | |
| 12-6-85 | Cover Letter from Honorable James H. Meredith stating pretrial motions reset to 12-13-85 at 10:00 a.m. in St. Louis as Michael Fawer, Atty. fro deft. will be involved in prev. trial and Gov't. has no objection, filed. | |
| *<br>12-20-85 | Gov't's. Memorandum of Law Concerning Disclosure of Internal Department of Justice Memoranda w/cert. of serv., filed. | |
| 12-20-85 | Gov't's. Memorandum of Law Concerning Count One w/cert. of serv., filed. | |
| 12-20-85 | ORDER: Deft's Motion for A Bill of Particulars: Deft. not entitled to further response on first three items of motion for bill of particulars. Gov't. need not respond to requests four and five. The Gov't. has answered 6 & 7, 8 & 9. Gov't. has answered 10 sufficiently. Gov't. has answered 10 sufficiently. Gov't. has answered 11. Request 12, 13 & 14 request spec. evidentiary matters and gov't. need not respond to them. Motion for Discovery of Electronic Surveillance: Gov't. responded that there were no T III wiretaps. Tape recording of 4-9-84 interview has been turned over to defense. Tapes | |

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UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U.S. vs NIXON, WALTER L.

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| DATE | PROCEEDINGS (continued)<br>(Document No.) | V. EXCLUDABLE |
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| | made by Gov't. and in possession relating to case will be turned over pursuant to Jencks Act and Brady v. Maryland. Motion for Pretrial Disclosure of All Evidence Which the Gov't. Intends to Offer Pursuant to Rule 404(b) of Fed. Rules of Evidence: Brief will be filed one wk. prior to trial outlining matters which will be introduced. Motion for Discovery and Inspection: Government responds that production of statements (copies) of deft. has been made. Production of Material, books, documents, etc. belonging to WLN has been made. Gov't. has prod. all material pursuant to rule 16 re. Fairchild, (Wiley and Drew), Holmes and Ingram. Other material will be produced pursuant to Jencks Act and Brady . Gov't. has turned over copies of records of Fairchilds, Holmes, Ingram, Stocks, Lewis, McMullan, Jr. Glenn White to make available all files in his office. Gov't. to turn over remaining info on wells. Gov't. has agreed to submit to defense the polygraph rept. on one of the witnesses. Motion for Production of Exculpatory and Impeaching Evidence : Gov't. materials need not be furnished unless they contain Brady or Jencks Act. Gov't. shall supply any info of immunity. Gov't. shall supply rap sheet of any person who will be called as a witness by gov't. Gov't. shall supply info about formal or informal grants of immunity or placement in Witness Protection Program promised to any of the gov't. witnesses. Gov't. knows of no exculpatory info relating to Skip Jarvis. Gov't. responds all state and local files for witnesses who were law enforcement officers ex parte submission of material will be made. Additl. info re oil and gas invest. will be made one wk. prior to trial. Brady Material: Court orders that gov't. produce to deft. as soon as possible any material presently known by gov't. to be exculpatory, filed and entered in OB 1985, Pages 3824-32. (JHM) Copies of Order mailed to Attys. of Record. | |
| 12-30-85 | (Copy of )<br>/Supplemental Memorandum In Support of Deft. Walter L. Nixon, Jr's. Motion for A Bill of Particulars w/cert. of serv., filed. | |
| 12-30-85 | Copy of Supplemental Memorandum In Support of Deft. Walter L. Nixon, Jr.'s Motion for Production of Exculpatory Evidence w/cert. of serv., filed. | |
| 1-3-86 | Motion and Incorporated Memorandum for Leave to Issue Subpoenas Duces Tecum Requiring Pre-Trial Production of Documents In Accordance with Rule 17(c) of the F.R. of Cr. Procedure w/Exh. A and B and cert. of serv., filed w/proposed attached order. | |
| *<br>1-06-86 | ORDER: Counsel for deft. is granted leave to issue subpoena to Donald Butler, Dir. of MS Bureau of Narcotics as set out in Exh. A. Counsel for deft. shall reveal contents of any Fed. Bureau of Investigation report or Dept. of Justice memorandum, records, or any records from MS law enforcement agencies which he has received or may receive in the future. These records shall be used only for the purpose of preparing for trial and may not be revealed to any one other than those working on this trial, filed and entered in OB 1986, Pages 10 & 11. (JHM) Copies mailed to Attys. of Record. | |

RIMINAL DOCKET

H85-00012(L)

| DATE | PROCEEDINGS (continued) 1<br>(Document No.) | V EXCLUDABLE DELAY (a) | (b) | (c) | (d) |
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| *<br>16-85 | (Copy of Order)<br>ORDER: Jury Commission of U. S. Dist. Court draw from qualified jury wheel a district-wide jury from Southern, Hattiesburg, Jackson, Eastern and Western Divisions of the Sou. Dist. of MS the names of One Hundred and Seventy-five (175) qualified persons to serve as petit jurors in U.S. Dist. Ct. to appear on 1-21-86 at 9:30 a.m. Clk. issue summons with jury information cards and excuses and exemptions forms attached, to prospective jurors so drawn, and mail them to respective jurors by regular first-class mail and make affidavit of serv. thereof as required by law, filed and entered in O.B. '86, Pages 12 and 13, with affidavit of Clerk attached. | | | | |
| *<br>1-2-86 | ORDER: Jury be kept together in custody of Marshal on and after 1-21-86, and marshal make provisions for meals, transportation, lodging, entertainment, and medical needs, group participation of Protestant, Catholic, etc. services as desired, as well as expense of Hattiesburg Community Civic Center for a period of time necessary to choose a jury at rate of $50.00 per day, at expense of the U. S. until such time as they shall have reached a verdict, or are otherwise discharged, filed and entered in OB 1986, Page 34. (2) Cert. copies handed U. S. Marshal's Office. | | | | |
| 1-20-86 | Transcript of Hearing on Motions December 13, 1985 To Remain Under Seal to Be Opened Only By the Court Of Appeals, filed. (Placed in Vault) | | | | |
| 20-86 | Matters Submitted To Court Ex Parte By U.S. To Remain Under Seal To Be Opened only By the Court of Appeals, filed. | | | | |
| 1-25-86 | ORDER SEQUESTERING JURY, filed and entered in OB 1986, Pages 119-121. Copies Handed to Attys. of Record. | | | | |
| 1-25-86 | MOTIONS of Deft. - Gov't. Response and Court Orders on Motions to be kept under seal, filed. Placed in Vault. | | | | |
| 1-27-86 | ORDER: Court finds that time from 9-16-85 up to and including the first day of trial, January 21, 1986, is excluded from the time calculated under the Speedy Trial Act, filed and entered in OB 1986, Page 122. (Waiver included in Motion filed 10-28-85) (JHM) Copies handed to Attys. of Record. | | | | |
| 01-29-86 | SEALED ENVELOPE CONTAINING U. S. MARSHAL'S INCIDENT REPORT, FILED AND PLACED IN ENVELOPE IN SAFE. | | | | |
| 01-30-86 | ORDER: Clerk of the Court shall pay the following expenses incurred in cause during the selection of the jury:<br>1. Db Audio Services $75.00 and 2. Copy Cats $208.25, filed. and entered in OB 1986, Page 138. Copies handed to Attys. of Record. | | | | |
| 01-31-86 | ENVELOPE PLACED IN VAULT AND FILED UNDER SEAL PURSUANT TO DIRECTION OF HONORABLE JAMES H. MEREDITH. | | | | |
| 02-04-86 | Government's Motion in Limine to Exclude Extrinsic Evidence w/cert. of serv., filed. | | | | |
| 02-04-86 | Copy of Letter to Warden Turnbo, FCI, Re Royals presence as a witness as to arrangements, filed. | Interval (per Section II) | Start Date<br>End Date | Ltr. | Total |

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U.S. vs U.S.A. V. WALTER L. NIXON, JR.

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| DATE | PROCEEDINGS (continued) (Document No.) | V. EXCLUDABLE |
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| 02-04-86 | MOTION of Deft. And Incorporated Memorandum for Judgment of Acquittal At the Close of the Government's Evidence, filed. | |
| 02-04-86 | Government's Opposition to Deft's. MOTION for Judgment Of Acquittal w/cert. of serv., filed. | |
| 02-04-86 | FBI Report dated 6-5-85 of Dr. Katherine S. Aldridge filed and sealed pursuant to direction of Judge Meredith. Placed in Vault. | |
| 02-05-86 | ORDER: Writ of Habeas Corpus Ad Testificandum issued by this Court on 2-31-86 ordering the Warden of the Federal Correctional Institute in Fort Worth, Texas, to produce Robert Royals in open court in cause is rescinded, filed and entered in OB 1986, Page 177. (JHM) Copies of Order mailed to Attys. of Record. | |
| 2-10-86 | EXHIBITS TO JURY TRIAL: Stip-1 - 4; G-1 through G-20, G-22 through G-29, D-1 through D-8; D-13, D-15, 16, 16A, 17, 17A, 19, 20, 21, 24, 25, 27, 28, 29, 30, 31, 32, 32A, 33, 34 - 43, 43A, & 44, filed w/Witness List included. | |
| 2-10-86 | VERDICT: Ct. One: NOT GUILTY; Ct. Two: NOT GUILTY; Ct. Three: GUILTY; Ct. Four: GUILTY, filed. | |
| 2-10-86 | SPECIAL AND PRESS TRIAL PASSES issued to media personel and Deft. family members and friends, filed. | |
| 2-10-86 | NOTES to Judge Meredith from Jurors and Notes to Jurors from Judge Meredith on 2-8-86 and 2-9-86, filed. | |
| 2-14-86 | DEPUTY CLERK SHEET: Jury Trial held in H'burg. before Judge James H. Meredith with Dave Scott as Ct. Reptr. on January 20-25; 27-31, 1986 and February 3-9, 1986. Action: 1-20: In limine Motions; 1-21 thru 1-25 Jury Selection; 1-27: Jury sworn in. 24 hr. cont.; 1-28 Opening remarks; 2-4: Govt rested; deft's mot. for acquittal-DENIED. 2-7: Deft. rested. No rebuttal from govt.; deft's. mot. for acquittal-DENIED; 2-8: Closing statements. 3:57 P.M. - 11:45 P.M., jury deliberating; 2-9: Alternate jurors excused. Jury deliberated until 7:50 P.M. Verdict in ct. at 7:52 P.M. Cts. I & II Not Guilty; Cts. III & IV Guilty. Sent. set 3-31-86 at 10:00 A.M. IN HATTIESBURG, MS Deft. to remain P/R. (Misc. Bd.) | |
| 2-14-86 | ~~Copy~~ Orig. of Motion for Additl. Time In Which to File All Post-Verdict Motions Permitted Under Rules 29, 33, and 34 of F.R.Cr.P. w/cert. of serv. and proposed order, filed. | |
| 2-18-86 | Copy of Letter from Judge Meredith to Attys. of Record advising them that defense counsel have been given until 3-5-86 to file orig. motion with Clerk. Gov't. has until 3-12-86 to file response. If testimony is given prior to sent. date, it will be done in St. Louis on 3-17-86 at 10:00 a.m., filed. | |

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U.S.A. v. Walter L. Nixon, Jr.

| DATE | PROCEEDINGS (continued) | V. EXCLUDABLE DELAY (a) | (b) | (c) |
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| -21-86 | ORDER: Deft. granted additl. seventeen (17) days in which to file all post-trial motions permitted under Rules 29, 33 & 34 of the F.R.Cr.P., or until and including the 5th day of March, 1986, filed and entered in OB 1986, Page 276. Copies mailed to Attys. of Record. | | | |
| 3-5-86 | Copy of Deft's. Motion for Judgment of Acquittal After Verdict Pursuant to Rule 29(c) of F.R.Cr.P., filed. | | | |
| 3-5-86 | Copy of Deft's, Motion for Judgment of Acquittal After Verdict Pursuant to Rule 29(c) Of the F.R.Cr.P., filed. | | | |
| 3-5-86 | Copy of Motion to Hold Evidentiary Hearing on Deft., Walter L. Nixon's Post-Trial Motions for a New Trial and For An Order Authorizing the Issuance of Subpoenas In Connection Therewith, filed. | | | |
| 3-5-86 | Copy of Motion for a New Trial on Counts III & IV of the Indictment w/Exhibits A and B, filed. | | | |
| 3-5-86 | Copy of Memorandum In Support of Deft., Walter L. Nixon, Jr.'s, Motions for Judgment of Acquittal and Motion for a New Trial w/attachments and cert. of serv., filed. | | | |
| 3-10-86 | Letter to Clerk's Office from JHM advising pursuant to telephone conversations w/attys. of record, hearing on deft's. post-trial motions has been changed to 3-28-86 at 9:00 a.m. in H'burg. and to cont. to 29th if necessary to finish test. Sent. scheduled on 3-31-86 at 10:00 a.m. Jan Little granted permission to interview Gallagher and jurors alleged prejudiced. Mr. Fawer's Motion requesting issuance of subpoenas is granted, filed. | | | |
| 3-11-86 | Letter to Clerk's Office from JHM advising that Ms. Little (Gov't.) has been granted until 3-20-86 to file its responsive brief, filed. | | | |
| 3-20-86 | Government's Opposition to Deft's. Motions for Judgment of Acquittal And/Or For New Trial w/cert. of serv., filed. | | | |
| 3-20-86 | Government's Response to Deft's. Motion for Evidentiary Hearing w/cert. of serv., filed. | | | |
| 3-20-86 | Gov't's. Memorandum Concerning Bail w/cert. of serv., filed. | | | |
| 3-20-86 | Government's Motion to Quash Subpoenas Directed to Government Counsel w/cert. of serv., filed. | | | |
| 3-20-86 | Memorandum In Support of Motion to Quash Subpoenas Directed to Government Counsel w/cert. of serv., filed. | | | |
| -26-86 | Plntf's. Motion to Quash Subpoenas Directed to Government Agents w/cert. of serv., filed. | | | |
| 3-26-86 | Memorandum In Support of Motion to Quash Subpoenas Directed to | | | |

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CRIMINAL DOCKET U.S. vs WALTER L. NIXON, JR.

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| DATE | PROCEEDINGS (continued) | V. EXCLUDABLE DEL (a) | (b) | (c) |
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| | Government Agents w/cert. of serv., filed. | | | |
| 3-27-86 | Motion of MS Publishers Corporation and Tom Brennan to Quash Subpoena w/cert. of serv. w/Exh. 1, Affidavit of Tom Brennan, filed. | | | |
| 3-27-86 | Brief In Support of Motion to Quash Subpoena of Tom Brennan, filed. | | | |
| 3-28-86 | Response and Motion of James K. "Jim" Dukes to Quash Subpoena w/cert. of serv. and attached copy of subpoena, filed. | | | |
| 3-28-86 | Ordered by JHM on Response and Motion of James K. "Jim" Dukes to Quash Subpoena GRANTED & SO ORDERED, FILED. | | | |
| *<br>3-31-86 | Government's Memorandum Concerning Issues Raised at Hearing on Post-Trial Motions w/cert. of serv., filed. | | | |
| 3-31-86 | ORDER TO SURRENDER: Deft. ordered to surrender to Atty. General by reporting to designated institution on or before thirty (30) days after the Judgment becomes final. Probation Officer of this Court advise the deft of name and location of institution in which he is to serve his sent. within a reasonable period of time prior to the time and date that he is to report to the institution, filed. (Mailed Attys., Marshal, Prob. Off., LA) | | | |
| *<br>3-29-86 | GOVERNMENT'S Exhibit No. 9 Sealed per direction of Honorable James H. Meredith, filed and placed in Vault. | | | |
| 3-31-86 | Deft's. Supplemental Memorandum w/attachments, filed. | | | |
| *<br>4-1-86 | ORDER: Deft's. Motion for Judgment of Acquittal and Deft's. Motion for A New Trial are denied. A Memorandum of law which will become part of the court file will follow, filed and entered in OB 1986, Page 406. Copies of Order mailed to Attys. of Record. (Certified) | | | |
| 4-1-86 | ORDER: Deft. shall remain free on his own recognizance pending his appeal, filed. Copies of Order mailed to Attys. of Record Certified. | | | |
| *<br>3-31-86 | TRANSCRIPT OF THE RECORD OF JURY TRIAL HELD IN HATTIESBURG BEFORE HONORABLE JAMES H. MEREDITH ON JANUARY 20-25, 27-31, 1986 and FEBRUARY 3-9, 1986, VOLUMES 1-22, FILED BY DAVID SCOTT, COURT REPORTER. | | | |
| 4-3-86 | Deputy Clk. Sheet: Hearing on deft's motion for a new trial. Sent. immediately following in H'burg. before Judge Meredith w/Ct. Reptr. Lyn York on 3-28/29/31-86. ACTION: Tom Brennan's mot. to quash subpoena: WITHDRAWN. Ken White-Spooner's mot. to quash subpoena: DENIED. Reid Weingarten & Jan Little's Mot. to quash subpoenas: | | | |

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET
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| DATE | PROCEEDINGS (continued)<br>(Document No.) | V. EXCLUDABLE DELAY (a) | (b) | (c) | (d) |
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| | WITHDRAWN. Deft's mot. for acquittal or a new trial: DENIED. SENTENCING: 5 Yrs. on ea. ct. to run concurrently. Bond remains same & deft. to remain at liberty during appeal (Misc. Bd.) | | | | |
| 4-3-86 | EXHIBITS to Mot. for a New trial: D-1 thru D-5; G-1 thru G-9; (G-7 Sealed), filed. | | | | |
| 4-7-86 | JUDGMENT AND PROBATION/COMMITMENT ORDER: Impr. five (5) yrs. as to and under charge contained in ct. 3 of Indict. Five (5) yrs. as to and under charge contained in Ct. 4 such term of impr. to run concurrent with Ct. 3 for an aggregate term of impr. of Five (5) Yrs. Deft. rel. on bond pending appeal, filed and entered in C & J No. 4, Page 227.<br>Copies of J & C certified mailed to (3) U. S. Marshal, J'son (2) Prob. Office, New Orleans, LA and (1) ea. to Attys. of Record. | | | | |
| 4-8-86 | Notice of Appeal filed by Deft. to Fifth Circuit Court of Appeals from Judgment of conviction & order denying Motions for a New Trial and for Judgment of Acquittal, filed. Copies mailed to Attorneys for the Gov't., Attorney for the Deft., Court Reporters York and Scott, and U. S. Court of Appeals (Cert.), filed. | | | | |
| -8-86 | Letter of transmittal w/copy of Notice of Appeal (Cert.) and copy of docket entries (Cert.) mailed to Fifth Circuit Court of Appeals. | | | | |
| 4-11-86 | Transcript order: Transcript of hearing on post-trial motions on 3-28 to 3-31/86 and Hearing on Motion for a New Trial and Motion for Judgment of Acquittal, filed. | | | | |
| 4-14-86 | Memorandum In Support of Court's denial of deft's. Motion for Judgment of Acquittal or, in the alternative, for a New Trial on Cts. III and IV of the Indictment, filed. | | | | |
| 4-14-86 | Ret. of Serv. on subpoenas executed as to Thomas H. Bates, Charles Bolton, Donald W. Medley, Lillian Oddo on 2-5-86, filed. | | | | |
| 4-14-86 | Ret. of Serv. on subpoenas executed as to Marcia Bailey and Jimmie Pace on 2-7-86, filed. | | | | |
| 4-14-86 | Cover Letter to the court enclosing filing fee for appeal w/designation of entire record on appeal, filed. | | | | |
| 5-12-86 | TRANSCRIPT OF PROCEEDINGS ON MOTION FOR NEW TRIAL held in H'burg. on March 28th, 29th, and 31st, 1986 before Honorable James H. Meredith, Senior Judge for the Eastern District of Missouri, Federal Courthouse, Hattiesburg, MS, Volumes I, II, and III, filed.<br>----------+- | | | | |
| | | Interval (per Section III) | Start Date<br>End Date | Ltr Code | Total Days |

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET  U.S. vs  NIXON, WALTER L., JR.  H85-00012(L)
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| DATE | PROCEEDINGS (continued)<br>(Document No.) | V EXCLUDABLE DELA<br>(a) (b) (c) (d) |
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| 2-22-88 | CERTIFIED COPY OF OPINION from Fifth Circuit Court of Appeals: AFFIRMED, filed. (Opinion dated 4-30-87)(Judgment of Conviction) | |
| 2-22-88 | CERTIFIED COPY OF OPINION from Fifth Circuit Court of Appeals: Petition for rehearing and suggestion for rehearing denied, filed. | |
| 2-22-88 | JUDGMENT (Certified) from Fifth Circuit Court of Appeals: Judgment of District Court in this cause is affirmed, filed and entered in OB 1988, Page 62. | |
| 3-7-88 | ORDER: Deft. shall surrender to an institution designated by the U. S. Bureau of Prisons on or before thirty days after 2-22-88 when mandate was filed with the U. S. District Court. Clerk of the Court shall send copies of this order to the deft., his attys. of record, the atty. for the U. S., the U. S. Prob. Office and the U.S. Marshal's Service signed by JHM on 3-1-88, filed and entered in OB 1988, Pages 64 and 65. (J'son)<br>Copies of Order mailed to (3) U. S. Marshal, (2) U. S. Prob., Bonnaffon, N.O. (2) U. S. Prob. Gerald Brown, Biloxi, Attys. for Deft., Stewart, Toledano, Holleman, Atty. for Gov't., J. M. Cole, Public Int.,Washington, D. C., Deft., Walter L. Nixon,(2), Wm.R. Burchill, Jr., Gen. Counsel, Adm. Off. U. S. Courts, Washington, D. C. | |
| ~~3-8-88~~ | ~~Deft's. MOTION Under 28 USC 2255 to Vacate, Set Aside -- or Correct Sentence by a Person In Federal Custody, filed.~~<br>(SEE ORDER FILED 3-17-88) | |
| ~~3-8-88~~ | ~~Deft's. APPLICATION for Assignment of Case w/Exhibits A and B attached, filed.~~<br>(SEE ORDER FILED 3-17-88) | |
| ~~3-8-88~~ | ~~Deft's. MOTION for Leave to Exceed Page Limit w/Proposed order attached, filed.~~<br>(SEE ORDER FILED 3-17-88) | |
| ~~3-8-88~~ | ~~MEMORANDUM In Support of Motion to Vacate Conviction and Sentence w/Exhibits 1 through 8, filed.~~<br>(SEE ORDER FILED 3-17-88) | |
| ~~3-8-88~~ | ~~CERTIFICATE of Service of the above pleadings filed on 3-8-88 by the deft., filed.~~<br>(SEE ORDER FILED 3-17-88) | |
| 3-17-88 | CERTIFIED COPY OF ORDER: The Clerk is directed to remove the Motion for Writ of H. C. and the related Application for Application for Assignment of Case, Deft's. Motion for Leave to Exceed Page Limit, Memorandum In Support of Motion to Vacate Conviction and Sentence, and Certificate of Service from this file, to open a new civil action and to file those pleadings in that civil action. H.C. proceeding under Internal Rule 1 of this court would normally be assigned to a U. S. Magistrate, but because the movant is a Judge of this Court the undersigned, as Acting Chief Judge withdraws ref. to any Magistrate of the District and directs that the case not be assigned to any particular judge of this District at this time but that assignment await designation of a judge at a | |

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| DATE | PROCEEDINGS (continued)<br>(Document No.) | V. EXCLUDABLE DELAY (a) | (b) | (c) | (d) |
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| | later time signed by WHB on 3-16-88, filed.<br>Copies certified mailed to Attys., Holleman, Stewart, Toledano, James M. Cole, Dept. of Justice, Public Integ. Section, Washington, D. C., Judge Barbour, Judge Meredith. | | | | |
| 3-17-88 | Pursuant to Order filed on 3-17-88 docket entries filed on 3-8-88 are filed in Civil Action No. H88-0052. | | | | |
| 3-18-88 | CERTIFIED COPY ON PETITION FOR WRIT OF CERTIORARI to U. S. Court of Appeals for the Fifth Circuit No. 86-4248-- IT IS ORDERED by this court that the said petition be and the same is denied on 1-19-88, filed. (Received this date from Supreme Court of United States) | | | | |
| 4-4-88 | Letter from Honorable James H. Meredith to P. Suber, D. C. requesting copies of file and related documents per James Macklin of Adm. Office. Letter authorizes sealed documents be opened and resealed immediately after copying is completed. Judge Meredith has requested someone to hear latest motions filed in Civil Action because of health signed by JHM on 4-1-88, filed. | | | | |
| 4-4-88 | Letter from Honorable William H. Barbour, Jr.enclosing cpy. of letter from Judge Meredith requesting Judge Meredith's letter be filed authorizing copying, certifying and forwarding to to Congressman Peter Rodino, Chm. of House Judiciary Committee. Letter outlines procedure to follow re sealed documents signed by WHB on 4-1-88, filed. | | | | |
| | | Interval (per Section II) | Start Date<br>End Date | Ltr Code | Total Days |

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs
NIXON, WALTER L., JR.
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| DATE | PROCEEDINGS (continued) (Document No.) |
|---|---|
| 2-22-88 | CERTIFIED COPY OF OPINION from Fifth Circuit Court of Appeals: AFFIRMED, filed. (Opinion dated 4-30-87)(Judgment of Conviction) |
| 2-22-88 | CERTIFIED COPY OF OPINION from Fifth Circuit Court of Appeals: Petition for rehearing and suggestion for rehearing denied, filed. |
| 2-22-88 | JUDGMENT (Certified) from Fifth Circuit Court of Appeals: Judgment of District Court in this cause is affirmed, filed and entered in OB 1988, Page 62. |
| 3-7-88 | ORDER: Deft. shall surrender to an institution designated by the U. S. Bureau of Prisons on or before thirty days after 2-22-88 when mandate was filed with the U. S. District Court. Clerk of the Court shall send copies of this order to the deft., his attys. of record, the atty. for the U. S., the U. S. Prob. Office and the U.S. Marshal's Service signed by JHM on 3-1-88, filed and entered in OB 1988, Pages 64 and 65. (J'son)<br>Copies of Order mailed to (3) U. S. Marshal, (2) U. S. Prob., Bonnaffon, N.O. (2) U. S. Prob. Gerald Brown, Biloxi, Attys. for Deft., Stewart, Toledano, Holleman, Atty. for Gov't., J. M. Cole, Public Int., Washington, D. C., Deft., Walter L. Nixon, (2), Wm.R. Burchill, Jr., Gen. Counsel, Adm. Off. U. S. Courts, Washington, D. C. |
| ~~3-8-88~~ | ~~Deft's. MOTION Under 28 USC 2255 to Vacate, Set Aside or Correct Sentence by a Person In Federal Custody, filed.~~<br>(SEE ORDER FILED 3-17-88) |
| ~~3-8-88~~ | ~~Deft's. APPLICATION for Assignment of Case w/Exhibits A and B attached, filed.~~<br>(SEE ORDER FILED 3-17-88) |
| ~~3-8-88~~ | ~~Deft's. MOTION for Leave to Exceed Page Limit w/Proposed order attached, filed.~~<br>(SEE ORDER FILED 3-17-88) |
| ~~3-8-88~~ | ~~MEMORANDUM In Support of Motion to Vacate Conviction and Sentence w/Exhibits 1 through 8, filed.~~<br>(SEE ORDER FILED 3-17-88) |
| ~~3-8-88~~ | ~~CERTIFICATE of Service of the above pleadings filed on 3-8-88 by the deft., filed.~~<br>(SEE ORDER FILED 3-17-88) |
| 3-17-88 | CERTIFIED COPY OF ORDER: The Clerk is directed to remove the Motion for Writ of H. C. and the related Application for Application for Assignment of Case, Deft's. Motion for Leave to Exceed Page Limit, Memorandum In Support of Motion to Vacate Conviction and Sentence, and Certificate of Service from this file, to open a new civil action and to file those pleadings in that civil action. H.C. proceeding under Internal Rule 1 of this court would normally be assigned to a U. S. Magistrate, but because the movant is a Judge of this Court the undersigned, as Acting Chief Judge withdraws ref. to any Magistrate of the District and directs that the case not be assigned to any particular judge of this District at this time but that assignment await designation of a judge at a |

V. EXCLUDABLE DELAY
(a) Interval (per Section II) | (b) Start Date / End Date | (c) Ltr. Code | (d) Total Days

JNITED STATES DISTRICT COURT
RIMINAL DOCKET
AO 256A

Cr. H85-00012(L)

| DATE | PROCEEDINGS (continued)<br>(Document No.) | V. EXCLUDABLE DELAY<br>(a) (b) (c) (d) |
|---|---|---|
| | later time signed by WHB on 3-16-88, filed. Copies certified mailed to Attys., Holleman, Stewart, Toledano, James M. Cole, Dept. of Justice, Public Integ. Section, Washington, D. C., Judge Barbour, Judge Meredith. | |
| 3-17-88 | Pursuant to Order filed on 3-17-88 docket entries filed on 3-8-88 are filed in Civil Action No. H88-0052. | |
| 3-18-88 | CERTIFIED COPY ON PETITION FOR WRIT OF CERTIORARI to U. S. Court of Appeals for the Fifth Circuit No. 86-4248-- IT IS ORDERED by this court that the said petition be and the same is denied on 1-19-88, filed. (Received this date from Supreme Court of United States) | |
| 4-4-88 | Letter from Honorable James H. Meredith to P. Suber, D. C. requesting copies of file and related documents per James Macklin of Adm. Office. Letter authorizes sealed documents be opened and resealed immediately after copying is completed. Judge Meredith has requested someone to hear latest motions filed in Civil Action because of health signed by JHM on 4-1-88, filed. | |
| 4-4-88 | Letter from Honorable William H. Barbour, Jr.enclosing cpy. of letter from Judge Meredith requesting Judge Meredith's letter be filed authorizing copying, certifying and forwarding to to Congressman Peter Rodino, Chm. of House Judiciary Committee. Letter outlines procedure to follow re sealed documents signed by WHB on 4-1-88, filed. | |
| 4-28-88 | RET. ON C & J: Deft. surrendered/repted. to F.P.C., Eglin AFB, FLA. 32542 on 3-23-88, filed. | |
| 5-4-88 | Deft's. MOTION for Reduction of Sentence and Memorandum In Support of Motion to Reduce Sentence with Exhibits "A" and "B" attached, filed. | |
| 5-4-88 | Sealed Brown Manila envelope materials offered by Deft. In Support of his Motion which contains the following: (1) Unsealed envelope from Judge William C. Keady addressed to the U. S. District Court which was opened by mistake in Biloxi and forwarded to office of Boyce Holleman (2) Sealed envelopes from the following: Daniel, Coker, Horton and Bell, Sternett, Wilkinson & Ward, Cumbest, Cumbest and Hunter, P.A., Robert H. McFarland, Floyd J. Logan, P.A., Cupit & Maxey, Bobby G. O'Barr, P.A., Bryant, Stennis & Colingo (1), Bryant, Stennis & Colingo (2), Sekul, Hornsby, Teel & Tisdale, Schmidt Clinic (1), Schmidt Clinic (2), Gordon, Myers, Pitcher, Tynes, & Frazier, Bryan, Nelson, Allen, Schroeder and Cobb, Harry J. Joachim, Saint Alphonsus School, Dukes, Dukes and Keatings, P.A., P. H. Beer, Fountain & Lamas, Ltd., Catholic Diocese of Biloxi, Robert L. Netterville, Fred J. Cassibry, Judge Dan Russell, Franke, Rainey & Salloum, Sealed white envelope with no name | |

Interval Start Date

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U.S. vs

AO 256A

WALTER L. NIXON, JR.

H85 00012(L) 01
Yr Docket No. Def

| DATE | PROCEEDINGS (continued) (Document No.) | V EXCLUDABLE DELAY (a) | (b) | (c) | (d) |
|---|---|---|---|---|---|
| | (3) Unsealed letters received from the following: Danny Williams, Sr., William M. Rainey, Rev. Bruce D. Little, Sam Peterson, Joseph L. Fant, Ellis Branch, George Saxon, Benjamin F. Graves, James P. Coleman, Francis J. Selman, Jr., M.D., filed and SEALED.<br>Original Sealed envelope mailed Registered Mail on 5-10-88 to Earl Rainey, Courtroom Depty for Judge Nangle. | | | | |

Interval (per Section II) | Start Date / End Date | Ltr. Code | Total Days

## EXHIBITS NOT INCLUDED IN DOCUMENTS PHOTOCOPIED

## TAPES

(WILL BE COPIED AND MAILED AT LATER DATE)

| | |
|---|---|
| D-16 | Tape of conversation between Wiley Fairchild & Walter Jarvis on 4-18-84 |
| D-17 | Tape of telephone conversation between Wiley Fairchild & Walter Jarvis on 4-18-84 |
| D-32 | Excerpt of telephone call made by Pat McMullan to Bud Holmes 7-24-85 |
| D-43 | Tape of interview between Reid Weingarten and Walter L. Nixon, dated 4-19-84 |
| D-44 | Tape of Grand Jury testimony of Walter L. Nixon, Jr., taken 7-18-84 |

## DEFENDANT'S EXHIBIT NO. 31

DESCRIPTION BELOW
AS SIZE IS TOO LARGE FOR
PHOTOCOPYING

HANK WILLIAMS PHONOGRAPH RECORDS

TOTAL 6

(1) HANK WILLIAMS ON STAGE (MGM) RECORDED LIVE!

(2) HANK WILLIAMS, SR. LIVE AT THE GRAND OLE OPRY (MGM) (Promotional Copy Not for Sale)

(3) HANK WILLIAMS, SR. - 24 GREATEST HITS - VOLUME 2 (MGM) (2) RECORDS INCLUDED

(4) HANK WILLIAMS GREATEST HITS OF 14 HANK'S ALL-TIME BEST (MGM) High Fidelity

(5) HANK WILLIAMS I'M BLUE INSIDE (MGM) High Fidelity

(6) MOVIN' ON-LUKE THE DRIFTER - SONGS BY HANK WILLIAMS (MGM) STEREO

(Rev. 1/82) [illegible]

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United States of America

DISTRICT OF [illegible]

[illegible] Court

for the SOUTHERN [illegible] the annexed

and foregoing is a true and full copy of the original [illegible] -0001-(R)

styled UNITED STATES OF AMERICA V. [illegible]

REFERENCE RECORD CONSISTING OF FIVE VOLUMES OF THE COURT RECORD [illegible]

OF TRANSCRIPT OF COURT TRIAL - JURY - [illegible] VOLUMES OF [illegible]

NEW TRIAL, EXHIBITS TO JURY TRIAL AND RECORD [illegible]

OF THE [illegible] COURT [illegible]

[illegible]

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now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at HATTIESBURG, MISSISSIPPI

this 6th day of April , A.D. 1998.

CLARENCE A. PIERCE
Clerk.

By P. Suber
P. Suber
Deputy Clerk.

XX

U S TITLE SECTION — OFFENSES CHARGED — ORIGINAL COUNTS

| | |
|---|---|
| 18 USC 201(g) | Gratuity |
| 18 USC 1623 | Perjury |

SUPERSEDING COUNTS ☐ JURY ☐

XX ▸08 29 85 — 08 29 85

XX To suspend on pending charge
Suspend ▸1 20 86

| 1st appears with or waives counsel | ARRAIGNMENT | 1st Trial Ended | RE TRIAL | 2nd Trial Began | DISPOSITION DATE | SENTENCE DATE | FINAL CHARGES DISMISSED |
|---|---|---|---|---|---|---|---|
| 8-29-85 | 8-29-85 | 02 09 86 | | | | | |

III MAGISTRATE

| | | DATE | INITIAL NO |
|---|---|---|---|
| Search Warrant | Issued | | |
| | Return | | |
| Summons | Issued | | |
| | Served | | |
| Arrest Warrant Issued | | | |
| COMPLAINT ▸ | | | |

Date of Arrest — OFFENSE (in Complaint)

INITIAL APPEARANCE DATE ▸

PRELIMINARY EXAMINATION OR REMOVAL HEARING — Date Scheduled ▸ — Date Held ▸

☐ WAIVED ☐ NOT WAIVED — Tape Number

INTERVENING INDICTMENT

INITIAL NO — OUTCOME

☐ DISMISSED

☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT

☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

Show last names and suffix numbers of other defendants on same indictment/information

RULE ☐ ☐ ☐ ☐ ☐

BAIL • RELEASE

PRE INDICTMENT

Release Date

☐ Bail Denied — Fugitive — Pers. Rec. — PSA

AMOUNT SET $ — Conditions — 10% Dep — Surety Bd — Collateral — 3rd Party — Other

Date Set — Bail Not Made — Date Bond Made

POST INDICTMENT

ATTORNEYS

U S Attorney or Asst (202) 724-6974

Reid H. Weingarten-Jan Little
Trial Attorney
Public Integrity Section

Add. Cont.

P. O. BOX 50168
Public Integrity Section
Criminal Division
Department of Justice
Washington, D. C. 20004-0168
(202) 724-6974/724-7061

Defense 1 ☐ CJA 2 XX Ret. 3 ☐ Waived 4 ☐ Self 5 ☐

S.
Michael/Fawer
Herbert V. Lawson
Popham & Fawer, XXXXXX Hardy,/Zatzkis
700 Camp Street
New Orleans, LA 70130
(504) 528-9500

NAMES & ADDRESSES OF ATTORNEYS SURETIES ETC

U.S. Court House and Custom House
St. Louis, Missouri 63101

A TRUE COPY, I HEREBY CERTIFY,
Clarence A. Pierce, CLERK
By: 
Deputy Clerk

|  | PROCEEDINGS |
|---|---|
| 08 29 85 | Indictment, filed. |
| 08 29 85 | Grand Jury Return, filed. |
| [illegible] | Minute Entry: Arraignment on 8-29-85 before Judge Parker. Deft. waived reading of indict. and enteres a plea of NG to Cts. I through IV. Deft. rel. on pers. recogn., filed. |
| 9-16-85 | NOTICE of Appearance of Attys., Reid H. Weingarten and Jan Nielsen Little w/cert. of serv., filed. |
| 9-16-85 | Government's MOTION for a Sequestered Jury w/attachments and cert. of serv., filed. |
| 9-16-85 | APPENDIX to Government's Motion for a Sequestered Jury, filed. |
| 10-15-85 | ORDER: Trial set for 1-21-86 at 8:00 a.m. in H'burg. Deft. and Gov't. shall file all motions on or before 11-8-85. Deft. and Gov't. shall file all responses before 11-29-85. Motions will be heard in St. Louis on 12-6-85 at 10:00 a.m. Other motions may be filed after 11-8-85 by leave of ct. Time from 9-16-85 until all motions have been disposed of shall be excluded from tim calculated under Speedy Trial Act. Deft. and Gov't. shall submit to ct. the proposed jury charge and proposed voir dire if parties propose that the court question the jury on or before 1-13-86. Lawyers shall meet with ct. on 1-20-86 at 10:00 a.m. for purpose of disposing of all final matters necessary before trial, filed and entered in OB 1985, Pages 3372 and 3373. (JLM) Copies mailed to Attys. of Record. |
| 10-21-85 | Government's Opposition to Deft's. Motion to Transfer w/certification & cert. of serv. and proposed order, filed. |
| 10-28-85 | Motion and Incorporated Memorandum to Fix a Trial Date Beyond the Norman Time Limitations of 18 USC, 3161, et seq; and Waiver of Rights Under Said Act, filed. |
| 10-28-85 | STIPULATED ORDER: (1) Parties agree material shall not be disclosed to third parties except as is necessary to prepare for trial. (2) Parties agree that such material shall not be copied except as is necessary to prepare for trial of this matter. (3) Parties shall return to opposing counsel the originals and all copies of such documents, writings, and other materials. (4) This stipulated order shall have the same force and effect as a protective order entered Rule 16(d)(1) of FRCP. Parties reserve right to seek modification of this order upon proper notice and application, filed and entered in OB 1985, Pages 3438-39. (JHM) Copies mailed to Attys. of Record. |
| 10-28-85 | ORDER: Jury shall be sequestered as soon as it is selected, filed and entered in OB 1985, Page 3440. Copies mailed to Attys. of Record. |
| 11-7-85 | Gov't's, MOTION for Reciprocal Discovery w/cert. of serv., filed. |

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UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U.S. vs

NIXON, WALTER L., JR.

H85 00012(L)
Yr. | Docket No.

| DATE | PROCEEDINGS (continued)<br>(Document No.) | V EXCLUDABL (a) | (b) |
|---|---|---|---|
| 11-7-85 | Supplemental Memorandum In Support of Defendant's Motion to Fix the Place of Trial Within the Southern Dist. of MS w/ cert. of serv. and Attached Affidavit, filed. | | |
| 11-8-85 | Motion for A Bill of Particulars w/cert. of serv., filed. | | |
| 11-8-85 | Memorandum In Support of Motion for Bill of Particulars, filed. | | |
| 11-8-85 | Motion for Discovery of Electronic Surveillance w/cert. of serv., filed. | | |
| 11-8-85 | Memorandum In Support of Motion for Discovery of Electronic Surveillance, filed. | | |
| 11-8-85 | Motion for Pre-Trial Disclosure of All Evidence Which the Government Intends to Offer Pursuant to Rule 404(b) of the Federal Rules of Evidence w/cert. of serv., filed. | | |
| 11-8-85 | Memorandum In Support of Motion for Pre-Trial Disclosure of All Disclosure of All Evidence which the Government Intends to Offer Pursuant to Rule 404(b) of the Fed. Rules of Evidence, filed. | | |
| 11-8-85 | Motion and Incorporated Memorandum for Discovery and Inspection w/cert. of serv., filed. | | |
| 11-8-85 | Motion for Production of Exculpatory Evidence and for Disclosure of Impeaching Evidence w/cert. of serv., filed. | | |
| 11-8-85 | Memorandum In Support of Motion for Production of Exculpatory Evidence and for Disclosure of Impeaching Evidence, filed. | | |
| 11-8-85 | (Copy)<br>Joint Motion to Include in the Court Record of this matter all legal Memoranda and Affidavits Filed by either party w/ proposed order, filed. | | |
| 11-12-85 | ORDER: Deft's. Motion to fix place of trial in Biloxi pursuant to Rule 18 of F.R.C.P. is denied, filed and entered in OB 1985, Page 3541. (JHM) Copies of Order mailed to Attys. of Record. | | |
| 11-12-85 | Memorandum In Support of Order denying motion to fix place of trial in Biloxi, filed. | | |
| 11-15-85 | Joint Motion to Include in Court Record of this matter all legal Memoranda and Affidavits Filed by Either Party, filed. | | |
| 11-15-85 | ORDER: Pat Suber, DC, make part of official court record of matter all memoranda and affidavits filed by either party, filed and entered in OB 1985, Page 3582. (JHM) Copies mailed to counsel. | | |
| | --------------- | | |

Interval (per Section II) | Start Date / End Date | Ltr. Code

| DATE | PROCEEDINGS (continued) | V EXCLUDABLE DELAY (a) | (b) | (c) |
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| 11-27-85 | ORDER: Government's Motion for Reciprocal Discovery is granted in all respects. Deft. disclose to Gov't. all evidence and info described in Rule 16(b) and (c) F.R.C.P. and Deft. shall provide the Gov't. with witness statements pursuant to Rule 26.2, F.R.C.P. at time that the gov't. provides witness statements to Deft. pursuant to 18 U.S.C. 3500, filed and entered in OB 1985, Page 3647. (JHM)<br>Copies of order mailed to Attys. of Record. | | | |
| 12-02-85 | Gov't's. Answer to Deft's. Motion for Discovery w/cert. of serv., filed. | | | |
| 12-02-85 | Gov'ts. Response to Deft's. Motion for Production of Exculpatory Evidence and for Disclosure of Impeaching Evidence w/cert. of serv., filed. | | | |
| 12-02-85 | Gov't. Response to Deft's. Motion for Bill of Particulars w/cert. of serv., filed. | | | |
| 12-02-85 | Gov't. Response to Deft's. Motion for Pre-Trial Disclosure of 404(B) Evidence w/cert. of serv., filed. | | | |
| 12-02-85 | Gov't. Response to Motion for Discovery of Electronic Surveillance w/cert. of serv., filed. | | | |
| *<br>0-14-85 | Honorable James H. Meredith, Senior U. S. District Judge for Eastern District of Missouri has been designated to hold a District Court in Southern District of MS in re: United States v. Walter L. Nixon, Jr., No. H85-00012. Filed 10/14/85 H'burg. OB 1985, Page 3368. Card placed in index. | | | |
| 12-6-85 | Cover Letter from Honorable James H. Meredith stating pretrial motions reset to 12-13-85 at 10:00 a.m. in St. Louis as Michael Fawer, Atty. fro deft. will be involved in prev. trial and Gov't. has no objection, filed. | | | |
| *<br>12-20-85 | Gov't's. Memorandum of Law Concerning Disclosure of Internal Department of Justice Memoranda w/cert. of serv., filed. | | | |
| 12-20-85 | Gov't's. Memorandum of Law Concerning Count One w/cert. of serv., filed. | | | |
| 12-20-85 | ORDER: Deft's Motion for A Bill of Particulars: Deft. not entitled to further response on first three items of motion for bill of particulars. Gov't. need not respond to requests four and five. The Gov't. has answered 6 & 7, 8 & 9. Gov't. has answered 10 sufficiently. Gov't. has answered 10 sufficiently. Gov't. has answered 11. Request 12, 13 & 14 request spec. evidentiary matters and gov't. need not respond to them. Motion for Discovery of Electronic Surveillance: Gov't. responded that there were no T III wiretaps. Tape recording of 4-9-84 interview has been turned over to defense. Tapes | | | |

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U S vs NIXON, WALTER L.

H85 00012(L) 0
Yr. Docket No.

V EXCLUDABLE (a) (b)

| DATE | PROCEEDINGS (continued) (Document No.) |
|---|---|
|  | made by Gov't. and in possession relating to case will be turned over pursuant to Jencks Act and Brady v. Maryland. Motion for Pretrial Disclosure of All Evidence Which the Gov't. Intends to Offer Pursuant to Rule 404(b) of Fed. Rules of Evidence: Brief will be filed one wk. prior to trial outlining matters which will be introduced. Motion for Discovery and Inspection: Government responds that production of statements (copies) of deft. has been made. Production of Material, books, documents, etc. belonging to WLN has been made. Gov't. has prod. all material pursuant to rule 16 re. Fairchild, (Wiley and Drew), Holmes and Ingram. Other material will be produced pursuant to Jencks Act and Brady . Gov't. has turned over copies of records of Fairchilds, Holmes, Ingram, Stocks, Lewis, McMullan, Jr. Glenn White to make available all files in his office. Gov't. to turn over remaining info on wells. Gov't. has agreed to submit to defense the polygraph rept. on one of the witnesses. Motion for Production of Exculpatory and Impeaching Evidence : Gov't. materials need not be furnished unless they contain Brady or Jencks Act. Gov't. shall supply any info of immunity. Gov't. shall supply rap sheet of any person who will be called as a witness by gov't. Gov't. shall supply info about formal or informal grants of immunity or placement in Witness Protection Program promised to any of the gov't. witnesses. Gov't. knows of no exculpatory info relating to Skip Jarvis. Gov't. responds all state and local files for witnesses who were law enforcement officers ex parte submission of material will be made. Additl. info re oil and gas invest. will be made one wk. prior to trial. Brady Material: Court orders that gov't. produce to deft. as soon as possible any material presently known by gov't. to be exculpatory, filed and entered in OB 1985, Pages 3824-32. (JHM) Copies of Order mailed to Attys. of Record. |
| 12-30-85 | (Copy of )<br>/Supplemental Memorandum In Support of Deft. Walter L. Nixon, Jr's. Motion for A Bill of Particulars w/cert. of serv., filed. |
| 12-30-85 | Copy of Supplemental Memorandum In Support of Deft. Walter L. Nixon, Jr.'s Motion for Production of Exculpatory Evidence w/cert. of serv., filed. |
| 1-3-86 | Motion and Incorporated Memorandum for Leave to Issue Subpoenas Duces Tecum Requiring Pre-Trial Production of Documents In Accordance with Rule 17(c) of the F.R. of Cr. Procedure w/Exh. A and B and cert. of serv., filed w/proposed attached order. |
| *<br>2-06-86 | ORDER: Counsel for deft. is granted leave to issue subpoena to Donald Butler, Dir. of MS Bureau of Narcotics as set out in Exh. A. Counsel for deft. shall reveal contents of any Fed. Bureau of Investigation report or Dept. of Justice memorandum, records, or any records from MS law enforcement agencies which he has received or may receive in the future. These records shall be used only for the purpose of preparing for trial and may not be revealed to any one other than those working on this trial, filed and entered in OB 1986, Pages 10 & 11. (JHM) Copies mailed to Attys. of Record. |

Interval Start Date Ltr. T

H85-00012(L)

| DATE | PROCEEDINGS (continued) (Document No.) | V EXCLUDABLE DELAY (a) | (b) | (c) | (d) |
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| *<br>1[illegible]-85 | (Copy of Order)<br>ORDER: Jury Commission of U. S. Dist. Court draw from qualified jury wheel a district-wide jury from Southern, Hattiesburg, Jackson, Eastern and Western Divisions of the Sou. Dist. of MS the names of One Hundred and Seventy-five (175) qualified persons to serve as petit jurors in U.S. Dist. Ct. to appear on 1-21-86 at 9:30 a.m. Clk. issue summons with jury information cards and excuses and exemptions forms attached, to prospective jurors so drawn, and mail them to respective jurors by regular first-class mail and make affidavit of serv. thereof as required by law, filed and entered in O.B. '86, Pages 12 and 13, with affidavit of Clerk attached. | | | | |
| *<br>1-2-86 | ORDER: Jury be kept together in custody of Marshal on and after 1-21-86, and marshal make provisions for meals, transportation lodging, entertainment, and medical needs, group participation of Protestant, Catholic, etc. services as desired, as well as expense of Hattiesburg Community Civic Center for a period of time necessary to choose a jury at rate of $50.00 per day, at expense of the U. S. until such time as they shall have reached a verdict, or are otherwise discharged, filed and entered in OB 1986, Page 34. (2) Cert. copies handed U. S. Marshal's Office. | | | | |
| 1-20-86 | Transcript of Hearing on Motions December 13, 1985 To Remain Under Seal to Be Opened Only By the Court Of Appeals, filed. (Placed in Vault) | | | | |
| [illegible]-86 | Matters Submitted To Court Ex Parte By U.S. To Remain Under Seal To Be Opened only By the Court of Appeals, filed. | | | | |
| 1-25-86 | ORDER SEQUESTERING JURY, filed and entered in OB 1986, Pages 119-121. Copies Handed to Attys. of Record. | | | | |
| 1-25-86 | MOTIONS of Deft. - Gov't. Response and Court Orders on Motions to be kept under seal, filed. Placed in Vault. | | | | |
| 1-27-86 | ORDER: Court finds that time from 9-16-85 up to and including the first day of trial, January 21, 1986, is excluded from the time calculated under the Speedy Trial Act, filed and entered in OB 1986, Page 122. (Waiver included in Motion filed 10-28-85) (JHM) Copies handed to Attys. of Record. | | | | |
| 01-29-86 | SEALED ENVELOPE CONTAINING U. S. MARSHAL'S INCIDENT REPORT, FILED AND PLACED IN ENVELOPE IN SAFE. | | | | |
| 01-30-86 | ORDER: Clerk of the Court shall pay the following expenses incurred in cause during the selection of the jury:<br>1. Bb Audio Services $75.00 and 2. Copy Cats $208.25, filed. and entered in OB 1986, Page 138. Copies handed to Attys. of Record. | | | | |
| [illegible]-31-86 | ENVELOPE PLACED IN VAULT AND FILED UNDER SEAL PURSUANT TO DIRECTION OF HONORABLE JAMES H. MEREDITH. | | | | |
| [illegible]-86 | Government's Motion in Limine to Exclude Extrinsic Evidence w/cert. of serv., filed. | | | | |
| [illegible]-86 | [illegible] Letter to Warden Turmbo, FCI, Re Royals presence [illegible] a witness as to arrangements, filed. | Interval (per Section II) | Start Date End Date | Ltr. Code | Total |

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U.S. vs U.S.A. V. WALTER L. NIXON, JR.

H85-00012(L)
Yr. | Docket No.

| DATE | PROCEEDINGS (continued)<br>(Document No.) | V EXCLUDABL (a) | (b) |
|---|---|---|---|
| 02-04-86 | MOTION of Deft. And Incorporated Memorandum for Judgment of Acquittal At the Close of the Government's Evidence, filed. | | |
| 02-04-86 | Government's Opposition to Deft's. MOTION for Judgment Of Acquittal w/cert. of serv., filed. | | |
| 02-04-86 | FBI Report dated 6-5-85 of Dr. Katherine S. Aldridge filed and sealed pursuant to direction of Judge Meredith. Placed in Vault. | | |
| 02-05-86 | ORDER: Writ of Habeas Corpus Ad Testificandum issued by this Court on 2-31-86 ordering the Warden of the Federal Correctional Institute in Fort Worth, Texas, to produce Robert Royals in open court in cause is rescinded, filed and entered in OB 1986, Page 177. (JHM) Copies of Order mailed to Attys. of Record. | | |
| 2-10-86 | EXHIBITS TO JURY TRIAL: Stip-1 - 4; G-1 through G-20, G-22 through G-29, D-1 through D-8; D-13, D-15, 16, 16A, 17, 17A, 19, 20, 21, 24, 25, 27, 28, 29, 30, 31, 32, 32A, 33, 34 - 43, 43A, & 44, filed w/Witness List included. | | |
| 2-10-86 | VERDICT: Ct. One: NOT GUILTY; Ct. Two: NOT GUILTY; Ct. Three: GUILTY; Ct. Four: GUILTY, filed. | | |
| 2-10-86 | SPECIAL AND PRESS TRIAL PASSES issued to media personel and Deft. family members and friends, filed. | | |
| 2-10-86 | NOTES to Judge Meredith from Jurors and Notes to Jurors from Judge Meredith on 2-8-86 and 2-9-86, filed. | | |
| 2-14-86 | DEPUTY CLERK SHEET: Jury Trial held in H'burg. before Judge James H. Meredith with Dave Scott as Ct. Reptr. on January 20-25; 27-31, 1986 and February 3-9, 1986. Action: 1-20: In limine Motions; 1-21 thru 1-25 Jury Selection; 1-27: Jury sworn in. 24 hr. cont.; 1-28 Opening remarks; 2-4: Govt rested; deft's mot. for acquittal-DENIED. 2-7: Deft. rested. No rebuttal from govt.; deft's. mot. for acquittal-DENIED; 2-8: Closing statements. 3:57 P.M. - 11:45 P.M., jury deliberating; 2-9: Alternate jurors excused. Jury deliberated until 7:50 P.M. Verdict in ct. at 7:52 P.M. Cts. I & II Not Guilty; Cts. III & IV Guilty. Sent. set 3-31-86 at 10:00 A.M. IN HATTIESBURG, MS Deft. to remain P/R. (Misc. Bd.) | | |
| 2-14-86 | ~~Copy~~ Orig. of Motion for Additl. Time In Which to File All Post-Verdict Motions Permitted Under Rules 29, 33, and 34 of F.R.Cr.P. w/cert. of serv. and proposed order, filed. | | |
| 2-18-86 | Copy of Letter from Judge Meredith to Attys. of Record advising them that defense counsel have been given until 3-5-86 to file orig. motion with Clerk. Gov't. has until 3-12-86 to file response. If testimony is given prior to sent. date, it will be done in St. Louis on 3-17-86 at 10:00 a.m., filed. | | |

Interval | Start Date | Ltr

| DATE | PROCEEDINGS (continued) | V. EXCLUDABLE DELAY (a) | (b) | (c) |
|---|---|---|---|---|
| 2-21-86 | ORDER: Deft. granted additl. seventeen (17) days in which to file all post-trial motions permitted under Rules 29, 33 & 34 of the F.R.Cr.P., or until and including the 5th day of March, 1986, filed and entered in OB 1986, Page 276. Copies mailed to Attys. of Record. | | | |
| 3-5-86 | Copy of Deft's. Motion for Judgment of Acquittal After Verdict Pursuant to Rule 29(c) of F.R.Cr.P., filed. | | | |
| 3-5-86 | Copy of Deft's, Motion for Judgment of Acquittal After Verdict Pursuant to Rule 29(c) Of the F.R.Cr.P., filed. | | | |
| 3-5-86 | Copy of Motion to Hold Evidentiary Hearing on Deft., Walter L. Nixon's Post-Trial Motions for a New Trial and For An Order Authorizing the Issuance of Subpoenas In Connection Therewith, filed. | | | |
| 3-5-86 | Copy of Motion for a New Trial on Counts III & IV of the Indictment w/Exhibits A and B, filed. | | | |
| 3-5-86 | Copy of Memorandum In Support of Deft., Walter L. Nixon, Jr.'s, Motions for Judgment of Acquittal and Motion for a New Trial w/attachments and cert. of serv., filed. | | | |
| 3-10-86 | Letter to Clerk's Office from JHM advising pursuant to telephone conversations w/attys. of record, hearing on deft's. post-trial motions has been changed to 3-28-86 at 9:00 a.m. in H'burg. and to cont. to 29th if necessary to finish test. Sent. scheduled on 3-31-86 at 10:00 a.m. Jan Little granted permission to interview Gallagher and jurors alleged prejudiced. Mr. Fawer's Motion requesting issuance of subpoenas is granted, filed. | | | |
| 3-11-86 | Letter to Clerk's Office from JHM advising that Ms. Little (Gov't.) has been granted until 3-20-86 to file its responsive brief, filed. | | | |
| 3-20-86 | Government's Opposition to Deft's. Motions for Judgment of Acquittal And/Or For New Trial w/cert. of serv., filed. | | | |
| 3-20-86 | Government's Response to Deft's. Motion for Evidentiary Hearing w/cert. of serv., filed. | | | |
| 3-20-86 | Gov't's. Memorandum Concerning Bail w/cert. of serv., filed. | | | |
| 3-20-86 | Government's Motion to Quash Subpoenas Directed to Government Counsel w/cert. of serv., filed. | | | |
| 3-20-86 | Memorandum In Support of Motion to Quash Subpoenas Directed to Government Counsel w/cert. of serv., filed. | | | |
| 26-86 | Plntf's. Motion to Quash Subpoenas Directed to Government Agents w/cert. of serv., filed. | | | |
| 3-26-86 | Memorandum In Support of Motion to Quash Subpoenas Directed to | | | |

Interval (per Section II) | Start Date End Date | Ltr. Total Days

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U.S. vs WALTER L. NIXON, JR.

AO 256A

Page (8

| Yr | Docket No. |
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| DATE | PROCEEDINGS (continued) | V. EXCLUDABLE DEL | | |
|---|---|---|---|---|
| | (Document No.) | (a) | (b) | (c) |
| | Government Agents w/cert. of serv., filed. | | | |
| 3-27-86 | Motion of MS Publishers Corporation and Tom Brennan to Quash Subpoena w/cert. of serv. w/Exh. 1, Affidavit of Tom Brennan, filed. | | | |
| 3-27-86 | Brief In Support of Motion to Quash Subpoena of Tom Brennan, filed. | | | |
| 3-28-86 | Response and Motion of James K. "Jim" Dukes to Quash Subpoena w/cert. of serv. and attached copy of subpoena, filed. | | | |
| 3-28-86 | Ordered by JHM on Response and Motion of James K. "Jim" Dukes to Quash Subpoena GRANTED & SO ORDERED, FILED. | | | |
| * 3-31-86 | Government's Memorandum Concerning Issues Raised at Hearing on Post-Trial Motions w/cert. of serv., filed. | | | |
| 3-31-86 | ORDER TO SURRENDER: Deft. ordered to surrender to Atty. General by reporting to designated institution on or before thirty (30) days after the Judgment becomes final. Probation Officer of this Court advise the deft of name and location of institution in which he is to serve his sent. within a reasonable period of time prior to the time and date that he is to report to the institution, filed. (Mailed Attys., Marshal Prob. Off., LA) | | | |
| * 3-29-86 | GOVERNMENT'S Exhibit No. 9 Sealed per direction of Honorable James H. Meredith, filed and placed in Vault. | | | |
| 3-31-86 | Deft's. Supplemental Memorandum w/attachments, filed. | | | |
| * 4-1-86 | ORDER: Deft's. Motion for Judgment of Acquittal and Deft's. Motion for A New Trial are denied. A Memorandum of law which will become part of the court file will follow, filed and entered in OB 1986, Page 406. Copies of Order mailed to Attys. of Record. (Certified) | | | |
| 4-1-86 | ORDER: Deft. shall remain free on his own recognizance pending his appeal, filed. Copies of Order mailed to Attys. of Record Certified. | | | |
| * 3-31-86 | TRANSCRIPT OF THE RECORD OF JURY TRIAL HELD IN HATTIESBURG BEFORE HONORABLE JAMES H. MEREDITH ON JANUARY 20-25, 27-31, 1986 and FEBRUARY 3-9, 1986, VOLUMES 1-22, FILED BY DAVID SCOTT, COURT REPORTER. | | | |
| 4-3-86 | Deputy Clk. Sheet: Hearing on deft's motion for a new trial. Sent. immediately following in H'burg. before Judge Meredith w/Ct. Reptr. Lyn York on 3-28/29/31-86. ACTION: Tom Brennan's mot. to quash subpoena: WITHDRAWN. Ken White-Spooner's mot. to quash subpoena: DENIED. Reid Weingarten & Jan Little's Mot. to quash subpoenas: | | | |

CRIMINAL DOCKET
AO 256A

| DATE | PROCEEDINGS (continued) (Document No.) |
|---|---|
|  | WITHDRAWN. Deft's mot. for acquittal or a new trial: DENIED. SENTENCING: 5 Yrs. on ea. ct. to run concurrently. Bond remains same & deft. to remain at liberty during appeal (Misc. Bd.) |
| 4-3-86 | EXHIBITS to Mot. for a New trial: D-1 thru D-5; G-1 thru G-9; (G-7 Sealed), filed. |
| 4-7-86 | JUDGMENT AND PROBATION/COMMITMENT ORDER: Impr. five (5) yrs. as to and under charge contained in ct. 3 of indict. Five (5) yrs. as to and under charge contained in Ct. 4 such term of impr. to run concurrent with Ct. 3 for an aggregate term of impr. of Five (5) Yrs. Deft. rel. on bond pending appeal, filed and entered in C & J No. 4, Page 227.<br>Copies of J & C certified mailed to (3) U. S. Marshal, J'son (2) Prob. Office, New Orleans, LA and (1) ea. to Attys. of Record. |
| 4-8-86 | Notice of Appeal filed by Deft. to Fifth Circuit Court of Appeals from Judgment of conviction & order denying Motions for a New Trial and for Judgment of Acquittal, filed. Copies mailed to Attorneys for the Gov't., Attorney for the Deft., Court Reporters York and Scott, and U. S. Court of Appeals (Cert.), filed. |
| -8-86 | Letter of transmittal w/copy of Notice of Appeal (Cert.) and copy of docket entries (Cert.) mailed to Fifth Circuit Court of Appeals. |
| 4-11-86 | Transcript order: Transcript of hearing on post-trial motions on 3-28 to 3-31/86 and Hearing on Motion for a New Trial and Motion for Judgment of Acquittal, filed. |
| 4-14-86 | Memorandum In Support of Court's denial of deft's. Motion for Judgment of Acquittal or, in the alternative, for a New Trial on Cts. III and IV of the Indictment, filed. |
| 4-14-86 | Ret. of Serv. on subpoenas executed as to Thomas H. Bates, Charles Bolton, Donald W. Medley, Lillian Oddo on 2-5-86, filed. |
| 4-14-86 | Ret. of Serv. on subpoenas executed as to Marcia Bailey and Jimmie Pace on 2-7-86, filed. |
| 4-14-86 | Cover Letter to the court enclosing filing fee for appeal w/designation of entire record on appeal, filed. |
| 5-12-86 | TRANSCRIPT OF PROCEEDINGS ON MOTION FOR NEW TRIAL held in H'burg. on March 28th, 29th, and 31st, 1986 before Honorable James H. Meredith, Senior Judge for the Eastern District of Missouri, Federal Courthouse, Hattiesburg, MS, Volumes I, II, and III, filed.<br>----------- |

V. EXCLUDABLE DELAY

Interval (per Section III) | Start Date End Date | Ltr Code | Total Days

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs

NIXON, WALTER L., JR.

AO 256A

H85-00012(L)
Yr. | Docket No.

| DATE | PROCEEDINGS (continued) | V EXCLUDABLE DELA | | |
|---|---|---|---|---|
| | (Document No.) | (a) | (b) | (c) |
| 2-22-88 | CERTIFIED COPY OF OPINION from Fifth Circuit Court of Appeals: AFFIRMED, filed. (Opinion dated 4-30-87) (Judgment of Conviction) | | | |
| 2-22-88 | CERTIFIED COPY OF OPINION from Fifth Circuit Court of Appeals: Petition for rehearing and suggestion for rehearing denied, filed. | | | |
| 2-22-88 | JUDGMENT (Certified) from Fifth Circuit Court of Appeals: Judgment of District Court in this cause is affirmed, filed and entered in OB 1988, Page 62. | | | |
| 3-7-88 | ORDER: Deft. shall surrender to an institution designated by the U. S. Bureau of Prisons on or before thirty days after 2-22-88 when mandate was filed with the U. S. District Court. Clerk of the Court shall send copies of this order to the deft., his attys. of record, the atty. for the U. S., the U. S. Prob. Office and the U.S. Marshal's Service signed by JHM on 3-1-88, filed and entered in OB 1988, Pages 64 and 65.<br>Copies of Order mailed to (3) U. S. Marshal (J'son), (2) U. S. Prob., Bonnaffon, N.O. (2) U. S. Prob. Gerald Brown, Biloxi, Attys. for Deft., Stewart, Toledano, Holleman, Atty. for Gov't., J. M. Cole, Public Int., Washington, D. C., Deft., Walter L. Nixon, (2), Wm.R. Burchill, Jr., Gen. Counsel, Adm. Off. U. S. Courts, Washington, D. C. | | | |
| ~~3-8-88~~ | ~~Deft's. MOTION Under 28 USC 2255 to Vacate, Set Aside -- or Correct Sentence by a Person In Federal Custody, filed.~~<br>(SEE ORDER FILED 3-17-88) | | | |
| ~~3-8-88~~ | ~~Deft's. APPLICATION for Assignment of Case w/Exhibits A and B attached, filed.~~<br>(SEE ORDER FILED 3-17-88) | | | |
| ~~3-8-88~~ | ~~Deft's. MOTION for Leave to Exceed Page Limit w/Proposed order attached, filed.~~<br>(SEE ORDER FILED 3-17-88) | | | |
| ~~3-8-88~~ | ~~MEMORANDUM In Support of Motion to Vacate Conviction and Sentence w/Exhibits 1 through 8, filed.~~<br>(SEE ORDER FILED 3-17-88) | | | |
| ~~3-8-88~~ | ~~CERTIFICATE of Service of the above pleadings filed on 3-8-88 by the deft., filed.~~<br>(SEE ORDER FILED 3-17-88) | | | |
| 3-17-88 | CERTIFIED COPY OF ORDER: The Clerk is directed to remove the Motion for Writ of H. C. and the related Application for Application for Assignment of Case, Deft's. Motion for Leave to Exceed Page Limit, Memorandum In Support of Motion to Vacate Conviction and Sentence, and Certificate of Service from this file, to open a new civil action and to file those pleadings in that civil action. H.C. proceeding under Internal Rule 1 of this court would normally be assigned to a U. S. Magistrate, but because the movant is a Judge of this Court the undersigned, as Acting Chief Judge withdraws ref. to any Magistrate of the District and directs that the case not be assigned to any particular judge of this District at this time but that assignment await designation of a judge at a | | | |

AO 256A

| DATE | PROCEEDINGS (continued)<br>(Document No.) | V. EXCLUDABLE DELAY<br>(a) | (b) | (c) | (d) |
|---|---|---|---|---|---|
|  | later time signed by WHB on 3-16-88, filed.<br>Copies certified mailed to Attys., Holleman, Stewart, Toledano, James M. Cole, Dept. of Justice, Public Integ. Section, Washington, D. C., Judge Barbour, Judge Meredith. |  |  |  |  |
| 3-17-88 | Pursuant to Order filed on 3-17-88 docket entries filed on 3-8-88 are filed in Civil Action No. H88-0052. |  |  |  |  |
| 3-18-88 | CERTIFIED COPY ON PETITION FOR WRIT OF CERTIORARI to U. S. Court of Appeals for the Fifth Circuit No. 86-4248-- IT IS ORDERED by this court that the said petition be and the same is denied on 1-19-88, filed. (Received this date from Supreme Court of United States) |  |  |  |  |
| 4-4-88 | Letter from Honorable James H. Meredith to P. Suber, D. C. requesting copies of file and related documents per James Macklin of Adm. Office. Letter authorizes sealed documents be opened and resealed immediately after copying is completed. Judge Meredith has requested someone to hear latest motions filed in Civil Action because of health signed by JHM on 4-1-88, filed. |  |  |  |  |
| 4-4-88 | Letter from Honorable William H. Barbour, Jr.enclosing cpy. of letter from Judge Meredith requesting Judge Meredith's letter be filed authorizing copying, certifying and forwarding to to Congressman Peter Rodino, Chrm. of House Judiciary Committee. Letter outlines procedure to follow re sealed documents signed by WHB on 4-1-88, filed. |  |  |  |  |
|  |  | Interval (per Section II) | Start Date<br>End Date | Ltr Code | Total Days |

CRIMINAL DOCKET  U.S. vs  NIXON, WALTER L., JR.  H85-00012(L)

AO 256A ®

| DATE | PROCEEDINGS (continued) | V. EXCLUDABLE DELAY (a) | (b) | (c) | (d) |
|---|---|---|---|---|---|
| 2-22-88 | CERTIFIED COPY OF OPINION from Fifth Circuit Court of Appeals: AFFIRMED, filed. (Opinion dated 4-30-87) (Judgment of Conviction) | | | | |
| 2-22-88 | CERTIFIED COPY OF OPINION from Fifth Circuit Court of Appeals: Petition for rehearing and suggestion for rehearing denied, filed. | | | | |
| 2-22-88 | JUDGMENT. (Certified) from Fifth Circuit Court of Appeals: Judgment of District Court in this cause is affirmed, filed and entered in CB 1988, Page 62. | | | | |
| 3-7-88 | ORDER: Deft. shall surrender to an institution designated by the U. S. Bureau of Prisons on or before thirty days after 2-22-88 when mandate was filed with the U. S. District Court. Clerk of the Court shall send copies of this order to the deft., his attys. of record, the atty. for the U. S., the U. S. Prob. Office and the U.S. Marshal's Service signed by JNM on 3-1-88, filed and entered in CB 1988, Pages 64 and 65.<br>Copies of Order mailed to (3) U. S. Marshal, (2) U. S. Prob., Bonaffon, N.O. (2) U. S. Prob. Gerald Brown, Biloxi, Attys. for Deft., Stewart, Toledano, Holleman, Atty. for Gov't., J. M. Cole, Public Int., Washington, D. C., Deft., Walter L. Nixon, (2), Wm.R. Burchill, Jr., Gen. Counsel, Adm. Off. U. S. Courts, Washington, D. C. | | | | |
| ~~3-8-88~~ | ~~Deft's. MOTION Under 28 USC 2255 to Vacate, Set Aside or Correct Sentence by a Person In Federal Custody, filed.~~<br>(SEE ORDER FILED 3-17-88) | | | | |
| ~~3-8-88~~ | ~~Deft's. APPLICATION for Assignment of Case w/Exhibits A and B attached, filed.~~<br>(SEE ORDER FILED 3-17-88) | | | | |
| ~~3-8-88~~ | ~~Deft's. MOTION for Leave to Exceed Page Limit w/Proposed order attached, filed.~~<br>(SEE ORDER FILED 3-17-88) | | | | |
| ~~3-8-88~~ | ~~MEMORANDUM In Support of Motion to Vacate Conviction and Sentence w/Exhibits 1 through 8, filed.~~<br>(SEE ORDER FILED 3-17-88) | | | | |
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Interval (per Section II) | Start Date / End Date | Ltr. Code | Total Days

| DATE | PROCEEDINGS (continued)<br>(Document No.) | V. EXCLUDABLE DELAY (a) | (b) | (c) | (d) |
|---|---|---|---|---|---|
| | later time signed by WHB on 3-16-88, filed. Copies certified mailed to Attys., Holleman, Stewart, Toledano, James M. Cole, Dept. of Justice, Public Integ. Section, Washington, D. C., Judge Barbour, Judge Meredith. | | | | |
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| 4-4-88 | Letter from Honorable James H. Meredith to P. Suber, D. C. requesting copies of file and related documents per James Macklin of Adm. Office. Letter authorizes sealed documents be opened and resealed immediately after copying is completed. Judge Meredith has requested someone to hear latest motions filed in Civil Action because of health signed by JHM on 4-1-88, filed. | | | | |
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| 4-28-88 | RET. ON C & J: Deft. surrendered/repted. to F.P.C., Eglin AFB, FLA. 32542 on 3-23-88, filed. | | | | |
| 5-4-88 | Deft's. MOTION for Reduction of Sentence and Memorandum In Support of Motion to Reduce Sentence with Exhibits "A" and "B" attached, filed. | | | | |
| 5-4-88 | Sealed Brown Manila envelope materials offered by Deft. In Support of his Motion which contains the following: (1) Unsealed envelope from Judge William C. Keady addressed to the U. S. District Court which was opened by mistake in Biloxi and forwarded to office of Boyce Holleman (2) Sealed envelopes from the following: Daniel, Coker, Horton and Bell, Sternett, Wilkinson & Ward, Cumbest, Cumbest and Hunter, P.A., Robert H. McFarland, Floyd J. Logan, P.A., Cupit & Maxey, Bobby G. O'Barr, P.A., Bryant, Stennis & Colingo (1), Bryant, Stennis & Colingo (2), Sekul, Hornsby, Teel & Tisdale, Schmidt Clinic (1), Schmidt Clinic (2), Gordon, Myers, Pitcher, Tynes, & Frazier, Bryan, Nelson, Allen, Schroeder and Cobb, Harry J. Joachim, Saint Alphonsus School, Dukes, Dukes and Keatings, P.A., P. H. Beer, Fountain & Lamas, Ltd., Catholic Diocese of Biloxi, Robert L. Netterville, Fred J. Cassibry, Judge Dan Russell, Franke, Rainey & Salloum, Sealed white envelope with no name | | | | |
| | | Interval<br>Ins. Section (1) | Start Date<br>End Date | Ltr. | Total |

CRIMINAL DOCKET U.S. vs

AO 256A ®

WALTER L. NIXON, JR.

85 00012(L) 01

Yr. | Docket No. | Def.

| DATE | PROCEEDINGS (continued) | V. EXCLUDABLE DELAY (a) | (b) | (c) | (d) |
|---|---|---|---|---|---|
| | (Document No.)<br>(3) Unsealed letters received from the following: Danny Williams, Sr., William M. Rainey, Rev. Bruce D. Little, Sam Peterson, Joseph L. Pant, Ellis Branch, George Saxon, Benjamin F. Graves, James P. Coleman, Francis J. Selman, Jr., M.D., filed and SEALED.<br>Original Sealed envelope mailed Registered Mail on 5-10-88 to Earl Rainey, Courtroom Depty for Judge Nangle. | | | | |

Interval (per Section II) | Start Date / End Date | Ltr. Total / Code Days

## EXHIBITS NOT INCLUDED IN DOCUMENTS PHOTOCOPIED

### TAPES

(WILL BE COPIED AND MAILED AT LATER DATE)

| | |
|---|---|
| D-16 | Tape of conversation between Wiley Fairchild & Walter Jarvis on 4-18-84 |
| D-17 | Tape of telephone conversation between Wiley Fairchild & Walter Jarvis on 4-18-8 |
| D-32 | Excerpt of telephone call made by Pat McMullan to Bud Holmes 7-24-85 |
| D-43 | Tape of interview between Reid Weingarten and Walter L. Nixon, dated 4-19-84 |
| D-44 | Tape of Grand Jury testimony of Walter L. Nixon, Jr., taken 7-18-84 |

DEFENDANT'S EXHIBIT NO. 31

DESCRIPTION BELOW
AS SIZE IS TOO LARGE FOR
PHOTOCOPYING

HANK WILLIAMS PHONOGRAPH RECORDS
TOTAL 6

(1) HANK WILLIAMS ON STAGE (MGM) RECORDED LIVE!
(2) HANK WILLIAMS, SR. LIVE AT THE GRAND OLE OPRY (MGM) (Promotional Copy Not for Sale)
(3) HANK WILLIAMS, SR. - 24 GREATEST HITS - VOLUME 2 (MGM) (2) RECORDS INCLUDED
(4) HANK WILLIAMS GREATEST HITS OF 14 HANK'S ALL-TIME BEST (MGM) High Fidelity
(5) HANK WILLIAMS I'M BLUE INSIDE (MGM) High Fidelity
(6) MOVIN' ON-LUKE THE DRIFTER - SONGS BY HANK WILLIAMS (MGM) STEREO

United States of America

[illegible] DISTRICT [illegible]

[illegible]

and foregoing [illegible] 00012 [illegible]

[illegible]

REFERENCE RECORD CONSISTING OF [illegible] VOLUMES OF THE COURT RECORD [illegible] VOLUMES OF TRANSCRIPT OF COURT TRIAL [illegible] THREE VOLUMES OF TRANSCRIPT OF MOTION FOR NEW TRIAL, EXHIBITS [illegible] INCLUDED [illegible] CONSISTING OF SIX ENVELOPES [illegible]

[illegible]

now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at HATTIESBURG, MISSISSIPPI this 6th day of April, A.D. 1988.

CLARENCE A. PIERCE
*Clerk.*

By P. Suber
P. Suber
*Deputy Clerk.*

COMMITTEE EXHIBIT NO. 53

PROB 2
(Rev. 4/84)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA FOR
SOUTHERN DISTRICT OF MISSISSIPPI
PRESENTENCE REPORT

**NAME (Last, First, Middle)**
NIXON, Walter L., Jr.

**DICTATION DATE**
3/21/86

**ADDRESS**
1204 Iola Road
Ocean Springs, Mississippi
39564

**LEGAL RESIDENCE**
Same

**SCHEDULED SENT. DATE**
3/31/86

**DOCKET NO.**
H85-00012(L)

**CITIZENSHIP**
United States

| AGE | RACE | DATE OF BIRTH | PLACE OF BIRTH | SEX | EDUCATION |
|---|---|---|---|---|---|
| 57 | White | 12/16/28 | Biloxi, Mississippi | Male | Juris Doctor |

**MARITAL STATUS**
Married

**DEPENDENTS**
Five (wife & 4 children)

**SOC. SEC. NO.**
427-64-7915

**FBI NO.**
Unknown

**U.S. MARSHAL NO.**
Unavailable

**OTHER IDENTIFYING NO.**

**OFFENSE**

Four-count Indictment charging the acceptance of a gratuity (18 USC §201(g)) and perjury (18 USC §1623)

**PENALTY**

Count I - Two years and/or $10,000
Counts II, III and IV - Five years and/or $10,000

**CUSTODIAL STATUS**
At liberty on personal appearance bond

**DATE OF ARREST**
8/29/85

**PLEA**

Not guilty to all counts on 8/29/85

**VERDICT** On 2/9/86 found guilty of Counts III and IV.
Not guilty as to Counts I and II.

**DETAINERS OR CHARGES PENDING**

None

RELATED CASE

Page 3

**OTHER DEFENDANTS**

None

**ASSISTANT U.S. ATTORNEY**
Reid Weingarten

Jan Little

**DEFENSE COUNSEL**
Michael S. Fawer &
Herbert V. Larson, Jr.
Attorneys at Law
700 Camp Street (504-528-9500)
New Orleans, LA 70130

**DISPOSITION**

**SENTENCING JUDGE**
James H. Meredith

**DATE**

**PROBATION OFFICER**
Gerald J. Bonnaffons, Chief

OFFENSE:

Prosecution Version.

Indictment: On February 9, 1986, Walter L. Nixon, Jr., Chief U. S. District Judge, Southern District of Mississippi, was found guilty of Counts III and IV of a four-count indictment charged with violations of Title 18, U. S. Code, Section 201(g) and Title 18, U. S. Code, Section 1623. Count I charges, essentially, that Judge Nixon purchased from one Wiley Fairchild, a Hattiesburg businessman, mineral royalty interests "...worth far more than any consideration the Defendant, Walter L. Nixon, Jr., agreed to pay for the interests", which agreement, allegedly, was "...for and because of official acts to be performed by the Defendant", in violation of Title 18, U. S. Code, Section 201(g).

The remaining counts allege that, on July 18, 1984, Judge Nixon testified falsely before a Grand Jury in the Southern District of Mississippi when he denied discussing with Wiley Fairchild the pending state case against Fairchild's son, Drew (Count II); when he denied discussing the same case with the former District Attorney, Paul H. "Bud" Holmes (Count III); and when he volunteered a statement to the Grand Jury in which he denied having had anything whatsoever to do with the Drew Fairchild case, whether by discussion or influence (Count IV), all counts charging violation of Title 18, U. S. Code, Section 1623.

Details. It would seem unnecessary to present here a detailed account of the Government's version of this offense as the court has personally heard all of the testimony in this matter. Moreover, it would appear unfair to highlight behavior on which the jury returned a verdict of Not Guilty. Accordingly, the events which culminated in the indictment will be summarized briefly in this report.

On August 4, 1980, a plane carrying marijuana was seized at the Hattiesburg Municial Airport, and several individuals were arrested. Drew Fairchild, one of the leasses of the airport, became a subject of this investigation and was indicted on August 26, 1981 by the state authorities. Paul H. "Bud" Holmes, a personal friend of Judge Nixon, was the District Attorney at the time of the indictment.

On or about February 25, 1981 three royalty deeds were prepared at the direction of Wiley Fairchild transferring mineral interests to Judge Nixon, for which interests the defendant paid $9,500.00. This purchase and agreement were the result of discussions which occurred some two years earlier between Judge Nixon and one Carroll Ingram (a friend of Judge Nixon and the attorney for Wiley Fairchild) and between Ingram and Fairchild.

Subsequently, Wiley Fairchild became so angry and frustrated at the manner in which his son's case was being handled by Bud Holmes that he met with Judge Nixon at Fairchild's office and complained that, in his opinion, Bud Holmes, and possibily Carroll Ingram, were essentially threatening blackmail of Fairchild. Fairchild testified that Judge Nixon made no specific response to these complaints and allegations, but Fairchild did assume that Judge Nixon would talk to Bud Holmes.

That same day (which Bud Holmes claims was on May 14, 1982, some seven months prior to the "passing to file" of the Drew Fairchild case) Judge Nixon visited with Bud Holmes, and Judge Nixon mentioned to Holmes his visit with Fairchild earlier in the day. According to Holmes' testimony, Judge Nixon statesd that Fairchild asked him "to put in a good word for his boy", although Holmes acknowledged that Judge Nixon indicated that he was not asking him to do anything. Bud Holmes further testified that he told Judge Nixon, during this visit, about his oral plea agreement with Drew Fairchild's attorney, and hemaintains that Judge Nixon asked if he (Judge Nixon) could call Wiley Fairchild and tell him this. The phone call then took place and both Holmes and Fairchild testified that Judge Nixon spoke on the phone before Holmes.

Subsequently, in early 1984, because of information voluntarily furnished by one Skip Jarvis, a relative and former employee of Wiley Fairchild, regarding the business arrangement between Fairchild and Judge Nixon, the Government initiated an investigation into this purchase and into its possible relationship with the handling of the Drew Fairchild case. A Grand Jury was impaneled in Hattiesburg, Mississippi on July 18, 1984.

Judge Nixon voluntarily appeared before the Grand Jury on July 18, 1984. The indictment presents some of the questions asked of Judge Nixon and his responses, as well as his prepared statement which concluded his testimony.

Defendant's Version: The defendant, through is attorney, will submit a prepared version, which will be attached to this report.

Victim Impact Statement: There are no monetary victims in this case. Obviously, the "victim" in a case where a federal judge is convicted of perjury before a Grand Jury is the criminal justice system. While there is the temptation to editorialize here on the tragic impact of such a situation, because the consequences are so apparent, any elaboration here is simply unnecessary.

Related Cases: Wiley Fairchild - Pleaded guilty in Docket No. 84-0009 (SD:MS) to Giving or Offering of Gratuity to a Public Official (Title 18, USC, Section 201(f). He was sentenced on September 18, 1985 by the Honorable Patrick E. Carr to the custody of the Attorney General for two years, with two months to serve and the balance suspended for inactive probation of three years and a fine of $10,000.00. This sentence was served in a halfway house facility.

Paul H. "Bud" Holmes - Pleaded guilty in Docket No. H85-0004 (SD:MS) to Misconduct Before a Grand Jury. On December 11, 1985 he was sentenced to the custody of the Attorney General for one year and fined $10,000.00, and a special assessment of $50.00 was imposed. This sentence is presently under appeal.

Redditt "Drew" Fairchild - Pleaded guilty in Docket No. 85-0005 (SD:MS) to Conspiracy to Import Marijuana and was sentence to the custody of the Attorney General for three years, with six months to serve and the balance suspended for two and one-half years probation on July 11, 1985 in the Middle District of Louisiana.

## PRIOR RECORD:

Record checks were conducted with the local authorities in Southern Mississippi and it was determined that this defendant has no prior arrests or convictions. Moreover, it should be mentioned at this point that this writer has been provided with a copy of the FBI investigation conducted on Judge Nixon in 1968 pursuant to his appointment to the federal bench. That investigation, likewise, reflected no arrests or convictions.

## PERSONAL AND FAMILY DATA:

Walter L. Nixon, Jr. was born on December 16, 1928 in Biloxi, Mississippi, the only child of Walter, Sr. and Hazel (nee Kornman) Nixon. His parents were native to the Mississippi Gulf Coast area and this was the first and only marriage for both. Both parents are now deceased.

The senior Nixon, who had only an elementary school education, was the County Supervisor for Harrison County, Mississippi from 1923 through 1939, when he was not re-elected. He was semi-retired thereafter, but did own some rental property. Mr. Nixon was in the Navy in World War I and a captain in the State Guard in World War II. He passed away in 1960 when sixty-four years old from heart failure and a stroke. According to the defendant, his father was certainly not wealthy, but did provide adequately for the family. He believes that his father had an excellent reputation during his years of public service, and the FBI investigation in 1968 confirms this claim, as does the fact that a major bridge in the Biloxi area has been named in honor of the senior Nixon.

Judge Nixon and his father were quite close. They hunted together and this sport has been a recreational hobby that Judge Nixon has continued to pursue with considerable interest and vigor.

The defendant's mother was a housewife. Everyone interviewed by this writer who knew this lady described her as a remarkable woman, well-liked and well-respected. She met with a tragic death in 1965, when sixty-nine years old. Mrs. Nixon was the victim of a rape/murder, and the perpetrator was later arrested, convicted and sentenced to death. However, because the death penalty was declared unconstitutional, his sentence was subsequently commuted, and he is now at liberty.

In addition to the obvious impact of such a tragedy, there was a possible collateral consequence that could not have been anticipated. The perpetrator of this crime was black. In 1968, the defendant sought appointment to the federal bench. Obviously, the racial views of an aspirant to a federal judgeship in the Statement of Mississippi during that time was a subject for investigation, and it is apparent from the FBI report that this was a question asked of practically every individual interviewed. The respondants (which, incidentally, included not only the police authorities who investigated this murder, but the attorneys who defended the perpetrator) all indicated that they had never heard Judge Nixon make a racist comment, nor did he attempt to influence the investigation in any way.

Education: This defendant attended grand school in Biloxi, Mississippi, spent his freshman year of high school at Sacred Heart High School, and then entered Notre Dame High School, also in Biloxi, in September, 1943. His school transcripts indicate that he was a superior student, had an overall grade point average of 92, and ranked second in his class of twenty-five. He was the salutatorian for his graduating class and received the scholarship, science, religion and service medals. He graduated in June, 1946.

On July 18, 1946, Judge Nixon entered the Marion Military Institute in Alabama and states that he declined a principal appointment to the U. S. Naval Academy becasue of his decision to study law. He completed his freshman year of college studies at this institution and states that he was awarded the conduct, natural science and speech medals. He transferred to Louisiana State University in Baton Rouge, enterin in September, 1947 and remaining until June, 1948. Because of his academic performnce at Marion and LSU, Judge Nixon was accepted into the Tulane University School of Law, entering on September 15, 1948, and receiving his degree on June 5, 1951. The university reports that "...he had an outstanding academic record; he was on the Tulane Law Review and earned Order of the Coif honors." His overall gradepoint average was 80.66 which placed him in the top 10% of his class.

Shortly after graduating, Judge Nixon returned to the Mississippi Gulf Coast, where he practiced law, until his appointment to the federal bench in 1968. More detailed information regarding his employment history will be provided later in this report.

Marital: On August 3, 1949, Judge Nixon married Carolyn Darnell Holt, now fifty-six, in Biloxi, Mississippi. A divorce decree was granted on May 30, 1974. Eight years later, Darnell married Bill Hudson, who passed away in July, 1985, and this union produced no children.

Carolyn Darnell was originally from Covington, Tennessee, moving to the Biloxi area with her family when about nine years old. Her parents are now deceased. Her father, Robert Oliver Holt, was involved in various businesses, including a lounge, a motel, a bar and was also a real estate broker.

Judge Nixon and his first wife began dating in their teens, and were married when he was in law school. She is a high school graduate and has no employment history. While this marriage lasted for some twenty-five years, and therefore certainly must have mutually rewarding and satisying for a significant period, the relationship deterioriated in the early 1970's, to the point where these two people are no longer on speaking terms.

She contends that, after her husband was appointed a federal judge, he began to ignore her and spent more and more time away from home. Judge Nixon, in response, explains that he was simply fulfilling his judicial responsibility. Eventually, they separated, which separation lasted seven or eight months. They got back together, but separated for the second and final time in November, 1973.

The Divorce Decree was filed on May 30, 1974, and Judge Nixon maintains that the financial obligations placed on him as a result of this divorce were significant, and, as will be elaborated upon later, were contributory to what he now considers a rather bleak financial situation. He was initially ordered to pay $1,250.00 per month alimony; was to maintain payment on certain insurance policies; and pay the attorney fees. She was allowed temporary use of the home. There was also the division of certain properties. The alimony was later reduced to $750.00 per month and then to $500.00 per month, and the insurance payments were eliminated. These reductions, according to Judge Nixon, were precipitated by his ex-wife's involvement with Bill Hudson.

During the interview with this writer, Mrs. Hudson stated that, while she and the Judge are no longer on amicable terms, she is not vindicitve, does not believe he would have done anything illegal, and hopes that the matter is finally resolved in his favor.

This first marriage produced two children, Karen Rebold, first-born, is now thirty-five. She is a graduate of LSU. Her first marriage lasted only a couple of years and ended in divorce. She is now happily married to a young man who works as a buyer for D. H. Holmes. They have two children and reside in Mandeville, Louisiana. Her mother is temporarily staying with her. Karen is an attractive and intelligent young woman who is quite close to her father, whom she describes as honest, religious and certainly dedicated to his children, even though the pressure of his job may have sometimes caused him to be out of touch with the emotional needs of individual family members. She begs for leniency for her father.

The second offspring is Walter, III, now thirty-one, and living with his wife and eight year old son in Denver, Colorado. He is co-manager of a Wendy's establishment. At one point in his life, he had aspirations of becoming a commercial pilot and had obtained his pilot's license, but was involved in a plane crash (no one was seriously injured) and thereafter gave up this career goal. He was not interviewed, but it is apparent that Walter did have a difficult early adulthood.

Subsequently, he and his father had a severe falling out, and they did not speak for several years, although within the past year they have resumed communication.

On June 5, 1976, Judeg Nixon married Barbara (nee Costello) Gill, now forty-two, in Ocean Springs, Mississippi. She had four children from her previous marriage, which ended in divorce, and her former husband is now deceased. Barbara is a Biloxi native, completed high school and has worked as a hairdresser, operating her own shop. She was interviewed by this writer and seems to be a straightforward and quite genuine young woman, sincerely interested in the welfare of her husband and family. She states that there is no better husband; that he is considerate of her feelings, needs and wants; and has been great to her children. While she acknowledged that his ex-wife probably blames her for their divorce, she and Judge Nixon both stated that they did not meet until after his first separation.

As indicated, Mrs. Nixon brought four children to this marriage, allof whom now legally carry the Nixon name, but have not been adopted. Her oldest son, Jospeh, twenty-one, has been a source of heartache for them. He was married and has a six month old child, but is now divorced. He is unemployed and lives in Biloxi. As a youngerster, he was hyperkinetic and had a learning disability (dyslexia) which contributed to his becoming a problem in the school setting.

Barbara's three younger children are: Shelly, twenty, a junior at LSU Baton Rouge; Shaye, nineteen, a freshman at LSU; and Sheriee, sixteen, a junior at Ocean Springs High School. These three young women are doing well and are reportedly close to and appreciative of their stepfather, who has taken full responsibility for their financial support. Finally, Judge Nixon and Barbara have a nine year old daughter, Courtney, from their union, who is a third grade student at a local Catholic school. The school principal was interviewed and she no tonly spoke highly of the younger children, with whom she is familiar, but also of the parents and their interest and devotion to their children.

Health: Judge Nixon reports that he is in good health. Dr. Harry J. Schmidt, now eighty, was interviewed as a character reference and he verified that the defendant is in good health, explaining that he has known and treated Judge Nixon for many years. This defendant had the usual childhood diseases with no complications. He states that, as a child, he had a tonsillectomy and surgery for a congenital double hernia. Approximately ten years ago a tumor was found int he salivary (i.e., right paroted) gland and outpatient surgery was performed by a physician in Jackson, Mississippi. Complications followed and aditional surgery (i.e., a parotedectomy) was performed at Ochsner Clinic by Dr. Francis E. LeJune on January 22, 1974.

In March, 1984, a treadmill test conducted at Ochsner Clinic indicated the possibility of coronary artery disease. Consequently, on April 5, 1984, a cardiac catheterization and coronary angiography were performed. The medical report indicated no coronary dysfunction discovered, other than "mitral valve prolapse".

Military: Military records indicate that Walter L. Nixon, Jr. was commissioned on June 6, 1950, while still at Tulane University, as a second lieutenant in the U. S. Air Force Reserves. He was called to active duty on February 20, 1953 and was released from active service on February 19, 1955 at the rank of captain. All of his service was stateside. He then continued in the active reserve until 1968, assigned to the Judge Advocate office at Keesler Air Force Base. He eventuallyl obtained the rank of major before bcoming a member of the inactive reserve, and he is now a major in the retired reserve. He had a total of two years active service and eleven years active reserve service. He received the National Defense Service Medal, his occupational specialty was Legal Officer, adn his performance ratings were either "very fine" or "outstanding".

Employment: As a youngster, Judge Nixon earned spending money working as a newspaper carrier, a substitute mail clerk and as a stock clerk at Keesler Air Force

Base. As indicated previously, he graduated from Tulane Law School on June 5, 1951. He then passed the Louisiana Bar Exam and was admitted to the Louisiana State Bar Association on August 1, 1951. However, he only remained in New Orleans a short time before returning to Biloxi where he passed the Mississippi Bar Exam in February, 1952. For a few months, until he was admitted to the Mississippi Bar, he worked for another attorney, Thomas J. Wiltz. He then began his practice of law, which was interrupted by his tour of active service with the Air Force. Judge Nixon states that he practiced alone until 1966 when he took in an associate, Sanford Steckler.

Judge Nixon explains that he had a general civil practice, with some criminal work, and specialized in plaintiff personal injury cases. He was quite successful in this practice as evidenced by his income tax returns filed in the two years prior to his appointment. His total income for 1965 was $131,848.36 and for 1966 ws $195,388.26.

As to the quality of his practice, it can be stated that the majority of people interviewed by the FBI in 1966, as well as everyone interviewed by this writer, had the highest praise for his ability. It was verified that he had an "A" rating in the Martindale Hubbell Law Directory. The following are some of the comments made about his skills as a lawyer.

> "Most outstanding plaintiff lawyer on the Mississippi Gulf Coast."
>
> "...the best living lawyer practicing law in Southern Mississippi."
>
> "...respected by all who deal with him."
>
> "...highly competent and conscientious attorney."
>
> "...brilliant young attorney"; "thorough"; "well-prepared".
> "...makes an excellent court appearance."
>
> "...very articulate...and is also a good advocate..."
>
> "...has a computer-like mind and is very brilliant."
>
> "...no one in the State of Mississippi more qualified."

Of course, there were some detractors who repeated rumors that, as a plaintif attorney, Judge Nixon was an "ambulance chaser"; used "runners" to refer accident cases; was unprincipled; had a contact at Keesler Air Force Base furnishing otential liability cases; and always seemed to have the right jurors on his cases. For the most part, however, everyone agreed that this was simply hearsay or gossip, and these allegations were generally attributed to "...soreheads who lost cases to him". There were no records of complaints or grievances filed against Judge Nixon with the Mississippi State Bar Association as of April 30, 1968 and a member of the Ethics Committee indicated that he had never heard the rumors just mentioned.

On July 26, 1968, Judge Nixon was appointed to the U. S. District Court Judge for the Southern District of Mississippi. He is now third in tenure of all judges in the Fifth

Circuit. He was sponsored by Senators James O. Eastland and John Stennis. Senator Eastland was a long-time personal friend of the judge, as well as his father. It is reported tht Judge Nixon was the youngest federal judge a tthat time. He became chief judge in September, 1982. As to his reason for seeking a judgeship, his explanation is direct and simple. Judge Nixon states that he wanted to serve the public and believes that it is the "ultimate" for a member of the legal profession.

Judge Nixon speaks with pride of his record since his appointment, as well as of the performance and reputation of the judges and supportive staff in the Southern District of Mississippi. He points out, for example, that his district has been first or second, for years, in the country in terms of filings and weighted caseloads per judge and in the top five or six in disposal rates. He was awarded a plaque by his former and present law clerks on July 26, 1983, expressing their gratitude. He is particularly proud of a resolution passed by the Harrision County Bar Association honoring him on April 18, 1983, a copy of which is attached to this report.

As to criticisms of his performance as a judge, this writer has been advised that, because of Judge Nixon's close relationship with personnel of the U. S. Marshal's Office in his district, he sometimes utilized deputies for tasks not within the scope of their duties. Also, before leaving this section of the report, it should be mentioned this writer has reviewed the Government's Pretrial Brief and the defendant's motions in reponse thereto. Since this writer made no independent investigation of the information provided therein, no comment will be made regarding the veracity of this material and will simply leave this as a matter for the court to consider, or not, as it so desires, since the court is quite aware of the allegations and explanations made therein.

Community Reputation: This writer has already described the reputation that Judge Nixon has within the legal profession. This section of the report will deal with his reputation in the community.

The following are some of the civic organizations in which the Judge was or is a member: Boy Scouts of America (Eagle Scout); American Legion; Knights of Columbus; Biloxi Chamber of Commerce (President in 1958); Kiwanis; Easter Seal Campaign Chariman in 1967; St. Vincent DePaul Society; Alton Ochsner Medical Foundation Society.

Individuals interviewed by this writer described the Judge as: a gentleman; an excellent neighbor; a hard worker; a man of integrity; somewhat shy and private; sincere; a devoted husband and father; a loyal friend. These people commented that they were certainly shocked when this investigation was disclosed, but they remain confident of the Judge's innocence and believe the verdict to be illogical and unfair. Several commented that the reaction of the general public, initially, was one of languid acceptance because of the rash of indictments of public officials in Southern Mississippi in recent years. They believe the Judge was initially treated unfairly by the news media, pointing out that Judge Nixon's name was included whenever anything remotely related to his case was reported. They suggest that the press became less hostile as the trial progressed and contend that even the "man on the street" must no see that, despite the verdict of the jury, Judge Nixon has been wrongfully accused.

Those who are close to the defendant state that he is a very religious man, a devout Catholic, and such does appear to be the case. He participates actively in church affairs and attends Mass several days a week and is distressed that he has severed himself from the sacraments because of his divorce. In fact, he is now actively seeking an annulment of his first marriage so that he can have his present marriage blessed, and can then return to the sacraments.

As indicated early in this report, Judge Nixon has been an avid outdoorsman all of his life. One of his critics, however, has suggested that he is not as conversation-minded as an individual in his position should be, which the Judge claims is simply not true.

Financial: Judge Nixon's financial statement, prepared on January 15, 1986, is attached to this report. It reflects total assets of $1,209,635.09 and liabilities of $222,510.28 for a net worth of $987,124.81. It can certainly be suggested that an individual with a net worth of almost $1 million is quite solvent. Judge Nixon, however, suggests that his holdings are not truly liquid assets and few are income producing. His annual income is $100,081.92, with his major income being his salary of $78,474.96. His income tax returns for the last three years show his total income for those years as follows: 1982 - $114,299.00; 1983 - $96,091.00; 1984 - $122,965.00.

Judge Nixon states that he has mortgaged his home to pay attorney fees and trial expenses and is having difficulty meeting his monthly expenses which, of course, include school tuition for his children - two in college, one in high school and one in parochial elementary school. He provided the following as an explanation for what he describes as his difficult financial situation.

As has already been indicated, Judge Nixon had a considerable income as a practicing attorney. He claims that, in each of his last two years of private practice, he earned approximately $215,000.00. His beginning salary as a federal judge was $42,500.00. His divorce in 1974, which included monthly alimony payments of $1,250.00, was quite costly, and he states that he had to borrow money to pay his taxes, both immediately before and after the divorce. He then assumed the financial responsibility for his present wife's four children and, of course, had to purchase another residence. It was for this reason that he sought investment opportunities in the late 1970's. Not all of these investments were profitable and, as indicated, he now has the added financial burden of this trial. An uncle passed away in September, 1984 and he did inherit some holdings which have relieved his situation somewhat.

As to his future finances, he will, of course, lose all of the financial benefits of his present position should he resign or be removed from the bench.

## EVALUATION:

Probation Officer's Assessment: The Honorable Walter L. Nixon, Jr., Chief United States District Judge for the Southern District of Mississippi, stands before this court convicted of lying to a Federal Grand Jury. The Government has stated in its closing argument that Judge Nixon chose not to testify truthfully about an embarrassing incident and that "It ws a disastrous decision by an otherwise fine judge," adding that "It was a decision probably based more on pride that any corruption." The sad irony is that, in this writer's opinion, the course taken by the State District Attorney, Bud Holmes, in the Drew Fairchild case, would have been essentially the same had ther been no contact whatsoever between Holmes and Judge Nixon. Moreover, it is this writer's understanding, particularly in light of the jury verdict, that the Judge commited no federal crime until he gave the perjured testimony. In other words, there was no reason to lie, other than perhaps that suggested by the Government, that is, pride.

To say that this conviction has destroyed this man's career is superfluous. Judge Nixon is essentially a self-made man. He had an excellent academic record, served his country admirably in the United States Air Force for many years, established a very successful law practice and reached the pinnacle of his career when he became Chief United States District Judge. While his personal and family life had included tragedy and disappointment, he reportedly is now happily married, and should be enjoying the fruits of his years of hard work. Instead, he and his family are experiencing considerable torment, and he is now faced with disgrace, termination of his lifelong profession and the loss of his financial security. Your Honor must now decide what additional punishment is necessary and appropriate.

Sentencing Alternatives/Supervision Plan: This defendant will come under the supervision of this office if the court imposes a probation sentence or, possibly, if the court imposes a sentence of imprisonment for more than one year. Such supervision would naturally concern itself with enforcement of any court-imposed conditions (e.g., fine, community service, special restrictions, etc.). There are no other special supervision plans suggested at this time although quite likely Judge Nixon, once the conviction has been finalized, may well need professional counseling to deal with the possible depression and emotional turmoil he will experience. If institutionalized, the only program need would be whatever special protection might be necessary because of his position.

Sentencing Data: The following local statistics were compiled by the United States Probation Office, Eastern District of Louisiana, for the period, July 1, 1984 to June 30, 1985. The latest national statistics for the same offense cover the period, July 1, 1982 to June 30, 1983.

OFFENSE: Title 18, U. S. Code, Section 1623 - False Statements - Felony
5 years/$10,000/both

| | NATIONAL | | EASTERN DISTRICT/LOUISIANA | |
|---|---|---|---|---|
| | Number | Percent | Number | Percent |
| Total Defendants Sentenced: | 80 | 100 | 1 | 100 |
| Fine Only: | 1 | 2 | 0 | 0 |
| Received Probation: | 25 | 31 | 0 | 0 |
| Split or mixed Sentence: | 13 | 16 | 0 | 0 |
| Imprisonment: | 41 | 51 | 1 | 100 |
| Average Sentence Of Imprisonment Was: (Excluding Split Or Mixed Sentence) | | 40 Months | 36 Months | |

Salient Factor Score:* 10 Offense Severity:* Category 3

*It is emphasized that these ratings, as well as the following calculations, are simply estimates by the probation officer based on the guidelines of the United States Parole Commission, and are in no way binding on the United States Parole Commission, which may rate the offense and/or the defendant differently.

Parole Prognosis: Although parole eligibility will depend on the type and length of sentence imposed, the United States Parole Commission guidelines indicate that the defendant, if committed, would not likely receive a favorable parole consideration until he has served from 10 months to 10 months, assuming good program and institutional adjustment.

Respectfully submitted,

Gerald J. Bonnafons
Chief U. S. Probation Officer

GJB:db
Attachments

## SOURCES OF INFORMATION:

Three interviews with defendant
Interviews with the defendant's wife, former wife and daughter
Interviews with character references
Character reference letters
Interviews with Government and defense attorneys
Trial transcripts and other court documents
1968 FBI report
Defendant's personal papers
Medical, educational and military verifications
Presentence report on related defendants
Record checks with local police authorities
Newspaper articles
Information obtained from confidential informants, which information is provided in the disclosable section of this report

U.S. Department of Justice
United States Parole Commission

U.S. Probation Officer's Parole Guideline Worksheet

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Name: Walter L. Nixon, Jr. Docket No.: H85-00012(L) Date: 3/21/86

*[Note: The following is only an estimate of the parole guideline range as the U.S. Parole Commission will compute the actual parole guideline range at the time of the parole hearing.]*

Offense Severity Rating is assessed as Category 3 because this is essentially one instance of perjury (though there are two counts) and, in light of the jury verdict, there is no underlying offense.

### SALIENT FACTORS

A. PRIOR CONVICTIONS/ADJUDICATIONS *(ADULT OR JUVENILE)* .................. 3
None = 3; One = 2; Two or three = 1; Four or more = 0

B. PRIOR COMMITMENT(S) OF MORE THAN THIRTY DAYS *(ADULT OR JUVENILE)* .................. 2
None = 2; One or two = 1; Three or more = 0

C. AGE AT CURRENT OFFENSE/PRIOR COMMITMENTS .................. 2
Age at commencement of the current offense:
26 years of age or more = 2***; 20-25 years of age = 1***;
19 years of age or less = 0
*** EXCEPTION: If five or more prior commitments of more than
thirty days *(adult or juvenile)*, place an "x" here _______
and score this item = 0

D. RECENT COMMITMENT FREE PERIOD *(THREE YEARS)* .................. 1
No prior commitment of more than thirty days *(adult or juvenile)* or
released to the community from last such commitment at least three years
prior to the commencement of the current offense = 1; Otherwise = 0

E. PROBATION/PAROLE/CONFINEMENT/ESCAPE STATUS VIOLATOR THIS TIME .................. 1
Neither on probation, parole, confinement, or escape status at the time
of the current offense; nor committed as a probation, parole, confinement,
or escape status violator this time = 1; Otherwise = 0

F. HEROIN/OPIATE DEPENDENCE .................. 1
No history of heroin/opiate dependence = 1; Otherwise = 0

TOTAL SCORE .................. 10

The applicable Guidelines are: [✓ Adult] (Youth/NARA)

Estimated Guideline Range <= 10 months.

Particularly Aggravating/Mitigating Factors (Optional): This defendant is a Chief U. S. District Judge.

© U.S. Government Printing Office: [illegible]

[illegible]

PROB 13D
(2-84)

## NOTICE TO DEFENDANT CONCERNING THE PRESENTENCE INVESTIGATION REPORT

| DEFENDANT'S NAME | U.S. DISTRICT COURT | DOCKET NO. |
|---|---|---|
| WALTER L. NIXON, JR. | EASTERN DISTRICT OF LOUISIANA | H85-00012(L) |

The following information is provided concerning the presentence investigation report prepared by the U.S. Probation Office in this district.

If a defendant is incarcerated, the presentence report is used by the Federal Bureau of Prisons to determine the institution in which the sentence is to be served, the defendant's classification within the facility, his ability to obtain furloughs, and his eligibility for programs within the institution.

The presentence report also plays an important role in the parole process. The United States Parole Commission uses it as a primary source of information for calculating the inmate's parole release date.

Initial appropriate box(es)

☐ I have read and understand this notice.

☐ I have read the presentence investigation report.

Signed ______________________________
Defendant Date

☐ I have read and understand this notice.

☐ I have read the presentence investigation report.

Signed ______________________________
Counsel Date

Witnessed ______________________________
U.S. Probation Officer

## Defendant's Version of the Offense

Beginning in the spring of 1979, and continuing throughout the summer and fall of that year, Walter L. Nixon, Jr. had a number of conversations with Carroll Ingram, an attorney in Hattiesburg, Mississippi, some of which included discussions of Judge Nixon's personal financial situation. The chief impetus for these discussions was Judge Nixon's belief that outside investments to supplement his salary as a federal judge would assist him in adequately providing for the education of his children.

As a result of these conversations, Judge Nixon, through Carroll Ingram, invested $9,500 (paying interest at 10%) with Wiley Fairchild, a successful Hattiesburg businessman and oil and gas speculator. This investment agreement was reached in the early part of 1980, but was not reduced to writing until late February or early March, 1981.

Judge Nixon had first met Wiley Fairchild in mid 1980, and after their first meeting, he remained in touch with Wiley Fairchild, and would infrequently visit him when he (the Judge) was in Hattiesburg. It was on one of these visits, which took place on March 11, 1983, that Wiley Fairchild told Judge Nixon that he felt that he was being blackmailed by Bud Holmes, the District Attorney for Perry County (Hattiesburg) and possibly Carroll Ingram because the case was being "dragged through the news media." This belief of Wiley Fairchild's arose from the way in which a state court prosecution of Drew Fairchild, Wiley's son, was being handled. (Unbeknownst to Judge Nixon, Drew Fairchild had conspired to import marijuana into Mississippi in the summer of 1980, had reached a plea agreement with federal prosecutors in the fall of 1980, and had been indicted in state court in August, 1981. Judge Nixon does recall having read that the case had been placed back on an active docket[1] prior to this meeting with Wiley Fairchild.)

---

[1] As the court is aware, the Drew Fairchild case was passed to the files in December, 1982, and returned to the active docket in January, 1983.

Because both Carroll Ingram and Bud Holmes were friends of Judge Nixon, and because Judge Nixon did not understand either the reasons for or the nature of Wiley Fairchild's accusations, he gave them little weight; in fact, he was embarrassed by the situation, and left Wiley's office as quickly as possible. Later that evening, Judge Nixon visited Bud Holmes at his farm, where he had gone to borrow some Hank Williams records, and chose to mention these accusations to Bud Holmes.

Bud Holmes' reaction can only be described as typical Bud Holmes. He accused Wiley Fairchild of being paranoid; he said that Wiley Fairchild always thought that everyone was after his money, and that there was no substance to the accusations, because a plea agreement had already been reached with Drew Fairchild, one which involved only a fine and probation.

Shortly thereafter, while the judge was looking through some records, Bud Holmes called Wiley Fairchild without apprising the Judge that he was doing so, and then handed the phone to the Judge. Wiley Fairchild told the Judge that he had been reassurred about his son's case by Bud Holmes, the Judge acknowledged this remark, and then gave the phone back to Bud Holmes. With the exception of a passing remark some months later to Carroll Ingram regarding this incident at Bud Holmes' farm, Judge Nixon had no further contacts with either Bud Holmes, or Wiley Fairchild, or anyone else which in any way related to the state prosecution of Drew Fairchild.

Over a year later, on April 19, 1984, the FBI and Reid Weingarten interviewed Judge Nixon, which made him aware for the first time that a full-scale investigation of his oil investment with Wiley Fairchild had begun. Knowing that there was nothing improper about the investment, and knowing that there was certainly no connection between this investment and the way in which the state prosecution of Drew Fairchild was handled, Judge Nixon consented not only to this taped interview, but also voluntarily appeared before the grand jury on the first day it was in session - July 18, 1984.

When Judge Nixon testified on this day, he believed that the whole purpose of the grand jury investigation was to see if his oil and gas investment was improper in any way, and if so, whether such had caused him to intercede in the state prosecution of Drew Fairchild - a belief which was reinforced by the substance and tenor of the questions posed to him in the grand jury. Consequently, when asked if he had ever "discussed" the Drew Fairchild case with Bud Holmes (Count III), Judge Nixon replied "no", because:

(1) Under any reasonable interpretation of the word "discuss", the Judge's having "passed on" an accusation of blackmail to Bud Holmes, who responded by telling the Judge the status of the case, would not constitute a "discussion" of the case; and

(2) Judge Nixon did not see or understand the connection between the phone call incident and the focus of the investigation, because there was none. To put it another way, Judge Nixon did not realize that the question posed ostensibly required an answer which would have included a recounting of the incident at the farm, which he believed to be intrinsically meaningless.

In sum, his failure to tell the grand jury about the "phone call" was not a deliberate attempt to conceal an incident about which he was never asked, but a good faith belief that his answer was truthful, which it was, this having been no more a discussion of the case than his alleged discussion of the case with Wiley Fairchild, an allegation properly rejected by the jury. Further, Judge Nixon thought a description of the incident would not have been responsive to the question, and thus contrary to the advice of his attorney, who told him to answer the questions asked truthfully, concisely and in a fashion that was to the point.

Finally, Judge Nixon maintains now, as he always has, that he never attempted to influence the way in which the Drew Fairchild case was handled, not even by so much as "putting in a good word" for Drew Fairchild. Accordingly, his statement which forms the basis of Count IV of the indictment is true both literally and figuratively, regardless of in what context it is placed.

Although his original plea of not guilty is a continual reminder of Judge Nixon's well-founded belief in his innocence, he states again that he believes he will be vindicated of these last two charges against him, just as he was vindicated on the charges that were the premise for the entirety of the Government's investigation.

United States District Court
Eastern District of Louisiana
500 Camp Street
New Orleans, Louisiana 70130

Peter Beer
Judge

RECEIVED
MAR 5 9 42 AM '86
[illegible]

March 4, 1986

Mr. Gerald J. Bonnaffons
Chief Probation Officer
U. S. District Court
Eastern District of Louisiana
500 Camp St., Room 325
New Orleans, Louisiana 70130

Dear Jerry:

I write to you in behalf of my friend (and brother judge) Walter Nixon.

We have known each other since we attended Tulane Law School at the same time back in the fifties.

For years after we graduated Walter was a hard working, successful trial lawyer in the Biloxi-Gulfport area.

After he was appointed U. S. District Judge in Southern Mississippi our paths crossed less frequently since I was, at that time, serving as a judge of the Louisiana Court of Appeal.

Then in 1979 I was appointed U. S. District Judge in Eastern Louisiana and we saw each other more frequently.

As the case backlog got heavier in Southern Mississippi, Walter asked me to lend a hand with the docket and I spent a fair amount of time between 1981 or 82 until the present helping out when I could over in Biloxi. It was during these years that I really came to know Walter as a fellow judge and as a warm-hearted, unassuming hospitable friend.

Both Walter and Barbara (his wife) made the judges who were helping out with the docket feel as though they were members of their family as far as making us feel at home. They spared no effort, in their pleasant unpretentious way, to be sure we were made to feel at home.

During this period Walter was always available to discuss any aspect of the cases I was handling without—ever—seeking in any way to inject himself into my considerations. It was never too much trouble for him to take time to answer any questions raised.

March 4, 1986

Also, during this time, I saw Walter in action as a patient, evenhanded, totally fair-minded Chief U. S. District Judge fully concerned with his responsibilities and obligations.

Also, as time passed I did come to know about Walter's problems that have culminated in the circumstances that now cause me to write this letter to you. Throughout those difficulties he has, insofar as I am able to report, conducted himself in a most admirable manner. He has never in any way suggested any criticism of his accusors but has steadfastly said that he felt he would be treated fairly and vindicated. Shocked and saddened by the outcome of the trial he has, nevertheless, fully kept his composure and his even-handed fair-minded consideration and compassion for others.

I respectfully submit to you that Walter Nixon the Judge would deal with Walter Nixon the accused in this case in a manner that would preserve the quite, compassionate dignity that is the hallmark of this good man. I can only hope that the sentencing judge will do likewise.

With respectful regards to you and appreciation for your consideration of what has been here stated, I am,

As ever,

Pete Beer

March 17, 1986

P. O. Drawer 726
Aberdeen, MS 39730

Honorable James H. Meredith
United States District Judge
1114 Market Street
St. Louis, Missouri 63101

Dear Judge Meredith:

This letter is written for your consideration in the sentencing phase of the trial of Judge Walter L. Nixon, Jr. I have known Judge Nixon since my return to Mississippi in March, 1980, to become an assistant United States attorney for the Southern District of Mississippi, a position I held until June 1, 1984. During the period of time I served as an assistant United States attorney, I had the pleasure of appearing before Judge Nixon on many occasions, in both civil and criminal trials. I found Judge Nixon to be the most capable of any trial judge I have appeared before. Not only is he knowledgeable in the law, Judge Nixon also possesses keen judgment and a sense for what is just. Although I did not always prevail in his court for my client, I never questioned his judgment or his decisions, for I found them to be inherently fair.

As a former assistant United States attorney I am well aware of the seriousness of the offenses for which Judge Nixon stands convicted. However, I am also cognizant of the impact this conviction has on Judge Nixon's family and his career. While not a social acquaintance of the Nixon family, I had the occasion to observe the closeness of Judge Nixon to his wife and children while I was stationed in Biloxi. I observed Judge Nixon to be a devout father and husband who strove to provide love and guidance for his family. In particular, I believe his hard work as a United States District Judge and the esteem in which he was held by the community and the bar was because of the importance in which he held his family and his desire to be a father and husband in which they could all be proud. Judge Nixon and his family have endured the lengthy investigation which preceded his trial and must endure the results of the trial forever. For a man who has worked so hard to attain such a position of respect, the fact of his conviction will be even more difficult.

I appreciate the difficulty you face in sentencing, Judge Meredith, because of Judge Nixon's position and the community's perception of the treatment of defendants who are lawyers and members of the judiciary. While not minimizing the seriousness of the offenses, I submit that Judge Nixon has already suffered more than the vast majority of criminal defendants. The impact of his conviction on his life and career is beyond description by someone who has not suffered it. I ask that you consider this impact and have compassion. A sentence that includes incarceration, in my opinion, will not serve the interest of justice.

If I can be of further assistance, please do not hesitate to call on me.

Sincerely,

Jerry A. Davis

Jerry A. Davis

JAD/egb

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March 18, 1986

Honorable James H. Meredith
United States District Judge
U. S. District Court and Custom House
1114 Market Street
St. Louis, MO 63101

Dear Judge Meredith:

By way of introduction, I have been practicing law for nineteen years and, for the past ten years, my law practice has been exclusively in the Federal Courts. Over this nineteen year period of time, I have been practicing law and, specifically over the past ten years, I have known the Honorable Walter Nixon and have appeared before him many times.

Having practiced law before many different judges, many of whom have national reputations, there is absolutely no question in my mind that Judge Walter Nixon is the most capable jurist before whom I have ever appeared. He has amazed me with the patience and fairness he has shown toward parties and lawyers in litigation before him and his intellectual capacity is unmatched by any lawyer or judge known by me.

The conviction of Judge Nixon is a devestating event for both the Bench and Bar in this State because it could result in the loss of this man whose character, integrity, honesty and devotion to his position is unquestioned by those of us who have known him over the years.

Notwithstanding my professional opinion of Judge Nixon, I know him to be a man of high moral standards in every facet of his life. He is a man who is deeply devoted to his family and his fellow man. He possesses a deep sense of compassion for not only people he personally knows but those he has contact with on a professional basis. It is this regard for other people that has given Judge Nixon the reputation he enjoys in this community and indeed throughout this State.

Honorable James H. Meredith
March 18, 1986
Page 2

Judge Walter Nixon is a rare man who could best serve the interest of the people of this State and of this Nation by remaining a United States District Court Judge.

With kindest personal regards, I am

Sincerely yours,

Ransom P. Jones, III

RPJ,III/jp

BENJAMIN F. GRAVES
PRIVATE INVESTIGATIONS
2301 Bullis Avenue
P. O. Box 1101
Gulfport, Mississippi 39502
Phone (601) 864-1865

March 19, 1986

Honorable James H. Meredith
United States District Judge
1114 Market Street
St. Louis, Missouri 63101

Dear Judge Meredith:

On December 22, 1978, I retired from the FBI, at which time I was the Senior Resident Agent of the Gulfport FBI Office. Shortly after being assigned to that position in Gulfport in May 1968, the FBI conducted the background investigation regarding Walter L. Nixon, Jr., when he became a candidate for a district judgeship in the Southern District of Mississippi.

I have been in Judge Nixon's courtroom on a number of occasions while he was presiding over a trial or conducting some type hearing. His demeanor was always that which one would expect of a United States District Judge. Judge Nixon always impressed me as being very intelligent and very knowledgeable regarding the law and his duties.

I have also had the opportunity to meet with Judge Nixon in his chambers on a number of occasions when I accompanied Special Agents in Charge and Chief Inspectors from Washington, D. C., to meet with Judge Nixon. Any time anyone with the FBI needed or wanted to see the Judge for any reason, he always made time for them and was always friendly and courteous.

Judge Nixon and his wife have attended retirement functions for FBI agents on the Gulf Coast, and they have both been supportive of the law enforcement community.

Since retiring from the FBI, I have been in the private investigative business, and I continue to have reason to be in the U. S. Courthouse in Biloxi. I have talked with various law clerks, court clerks and secretaries who work with Judge Nixon. They have all spoken very highly of the Judge, as have the Deputy U. S. Marshals, personnel in the U. S. District Court Clerk's Office and the security guards.

Recently, I talked with an executive vice president of a Gulfport, Mississippi, bank who has lived on the Gulf Coast for 25 years. He has never heard anything but favorable comments about Judge Nixon. I also recently talked with an individual who formerly served for seven years as a security guard in the U. S. Post Office Building in Biloxi. During that time, he saw Judge Nixon on almost a daily basis. He had nothing but favorable comments about Judge Nixon. People in a wide range of occupations with whom I come in contact have nothing but the highest regard for Judge Nixon.

I have known Judge Nixon for 18 years. He is a fine person, compassionate, a good husband and father. I do not believe he would ever do anything immoral or unethical, and he certainly would not violate any law.

I believe the jury was wrong in convicting Judge Nixon and hope that wrong will be corrected so this matter does not completely destroy a fine person and an outstanding jurist.

Sincerely,

Benjamin F. Graves

CHURCH OF SAINT MICHAEL
P. O. BOX 523 PHONE: (601) 435-5578 BILOXI, MISS. 39533

March 19, 1986

The Honorable James H. Meredith
U. S. District Judge
1114 Market Street
St. Louis, MO 63101

Re: Judge Walter Nixon, Jr.

Your Honor,

I write this letter for your consideration on behalf of Judge Walter Nixon, Jr.

Judge Nixon attends Sunday Mass regularly with his wife and family in St. Michael's Church, Biloxi, Mississippi.

I know Judge Nixon personally for a period of over ten years. I have found him to be a caring husband and father. To my knowledge, he enjoys an excellent reputation in our community. During the time that I have known him, I have found him to be honest and trustworthy.

Trusting that you will give my opinion consideration on behalf of Judge Nixon, I remain

Sincerely,

Gregory J. Johnson

Rev. Msgr. Gregory J. Johnson, Pastor

STATE OF MISSISSIPPI
DEPARTMENT OF PUBLIC SAFETY

COLONEL GEORGE SAXON
CHIEF OF PATROL

March 18, 1986

The Honorable James H. Meredith
United States District Judge
1114 Market Street
St. Louis, Missouri 63101

Dear Judge Meredith:

Please allow me to express my feelings and concern for Federal Judge Walter L. Nixon, Jr.

I have known Judge Nixon since 1956 when I was assigned to the Mississippi Gulf Coast as a rookie state trooper with the Mississippi Highway Safety Patrol. Judge Nixon at that time was a young, practicing attorney and I found him to be very intelligent and pro-law enforcement. Over the years of our association I came to know him as an honest and concerned man who held the honor of his profession above all else.

After serving nine years as a patrol officer, I attended the Federal Bureau of Investigation National Academy and was promoted to the rank of criminal investigator. During those years, the Mississippi Gulf Coast had the reputation of being wide open and unlawful, but never once did I ever hear Judge Nixon's name mentioned in any unlawful or unethical activity.

When Judge Nixon received his appointment as Federal Judge, he was the proudest man I had ever known and held his position beyond reproach. All of his decisions were fair and impartial and not once did I ever hear that he had favored one person or group of people over another.

When I heard that Judge Nixon had been indicted by the Grand Jury, I was surprised, but felt certain that he would be exonerated in court. When he was found guilty, I was totally shocked and overwhelmed with such a miscarriage of justice.

I am not an attorney and do not pretend to know all of the legal points of the law, but in my thirty-one years as a law enforcement officer, it is hard for me to comprehend how so many hardened criminals walk out of a courtroom free as a result of some legal technicality and someone as fine and reputable as Judge Nixon can be found guilty.

I understand and appreciate your position in this matter, but I beg you for compassion when you consider the fate of Judge Nixon.

Sincerely,

George Saxon
Colonel George Saxon
Assistant Commissioner/
Chief of Patrol

pb

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TIMOTHY E. HURLEY
MICHELE STAPLETON
DEBRA M. ROBBINS
CLINTON M. GUENTHER
JONATHAN B. FAIRBANK
S. MARK WANN
SILAS W. MCCHAREN
TRUDY D. FISHER

TELECOPIER
(601) 969-1116

March 18, 1986

Honorable James H. Meredith
United States District Judge
1114 Market Street
St. Louis, Missouri 63101

RE: United States District Judge
Walter L. Nixon

Dear Judge Meredith:

It is most painful for me to write you concerning the sentencing of Judge Nixon and I am certain that you find no pleasure in the task you are facing. Were I in your position, however, I believe I would welcome any information at hand as I approached such an unpleasant task as sentencing a fellow United States District Judge.

Practically all of our firm's law practice involves civil litigation and as that practice is rather extensive, I have necessarily been closely involved with the United States District Judges in Mississippi and particularly those in the Southern District. Somehow Judge Nixon has managed to be the busiest of the judges and therefore my association with him has been more extensive than with our other judges.

I first knew Judge Nixon to some extent prior to his appointment as a United States District Judge. At that time, he was a rather well known plaintiff's attorney but as his practice was closely confined to the Gulf Coast area, I only knew him, for practical purposes, by reputation.

Judge Nixon, upon taking the bench, quickly gained a reputation as a hard working judge. Of even more importance, however, Judge Nixon having been a former plaintiff trial lawyer, some of the defendants' attorneys were concerned that he might lean toward the plaintiffs in making his decisions. I think all of us quickly discovered, however, that that simply just was not going to be the case. If a defendant's attorney made a motion for summary judgment and Judge Nixon felt that summary judgment should be granted, it was granted. It was also quickly learned that Judge Nixon would not stand for any "earwigging", and insisted that when matters involving a particular case were brought up there would be no conversation about it without attorneys from both sides being present and I am firmly convinced that his reputation with all trial attorneys that he was a fair, honest and honorable man, both in his personal dealings and as a United States District Judge.

Frankly, I have had little social contact with Judge Nixon or his wife, Barbara. The only time I was ever in his home was the occasion of a Fifth Circuit Judicial Conference in Biloxi, I believe in 1981, when all the attorneys and judges in attendance were invited to his home. Most of my social contact with Judge Nixon and Barbara was along the same lines but as the years went by, we had an ever increasing relationship related to the trial of cases and also to the welfare of the United States District Court for the Southern District of Mississippi. For the years 1981-1982, I was president elect of the Bar and Judge Nixon enlisted the aid of the Bar through me and the then president of the Bar in contacting our congressman to enlist their help in procuring more district judges. This continued through my year as president of the Bar and these contacts made me more and more aware of his devotion to the concept of justice. To tell the truth, the only real fault I know of in Judge Nixon was his devotion to his wife and children. As you know, he lived in Biloxi and generally required the attorneys to come all the way to Biloxi from Jackson to hold hearings on motions, etc., and tried every way possible to avoid a protracted trial away from Biloxi, so that he could be with his family.

Knowing Judge Nixon as I have, it came as a complete and total shock that he should be accused of interferring in a state court trial and found guilty of perjury before a grand jury. It is simply, totally out of character and foreign to the demands he made upon witnesses and lawyers appearing before him and the demands he made upon himself.

Your Honor, while I am dedicated to the proposition that the punishment should fit the crime, it is just simply impossible for me to think of Judge Nixon as a criminal and I do not believe that he is. He is, of course, a man like the rest of us and all of us can make mistakes, but I do believe that a man's splendid record in dealing with his fellow man and in his efforts to do justice for others should be given great consideration especially when his life already appears to be in ruins.

I pray that you will take no offense at me writing this letter to you but I do hope that you will give my beliefs concerning Judge Nixon such consideration as you deem appropriate in your attempt to be fair with him.

With best regards,

Very truly yours,

DANIEL,COKER,HORTON AND BELL

Curtis E. Coker

CEC/lrl

WILLIAM C. KEADY
UNITED STATES DISTRICT JUDGE
GREENVILLE, MISSISSIPPI 38701

March 18, 1986

Honorable James H. Meredith
United States District Court
1114 Market Street
St. Louis, Missouri 36101

Dear Judge Mereith:

I write to you in the interest of a long time friend and colleague, Walter L. Nixon, who will be before you for sentencing at an early date. I trust that this letter will not increase the burden that you may very well feel in the unpleasant task of the sentencing of a fellow federal judge.

Even so, I feel compelled to write you in behalf of Judge Nixon. He has been, to my knowledge, an excellent judge with fine temperment and balance on the bench, thorough in research and, in all respects, performing the responsible task of a federal trial judge in the best traditions. It goes without saying that I have followed his case with intense interest and, while it is not becoming for me to be critical of the jury verdict, I do feel that a miscarriage did result from the Department of Justice ~~of~~ bringing the basic count of dealing with the illegal gift, so as to place in the minds of the jury the corruption on the part of a judge, when evidence was available to the government which sould undoubtedly have exonerated the defendant of that charge long before the case came to trial in your court.

The conviction on two counts of perjury, as serious as that my be, is not to be compared with the charge of corruption, with which Judge Nixon was needlessly prosecuted and was of course acquitted.

These considerations, I think, should be taken into account by Your Honor in the severity of any sentence imposed upon Walter Nixon.

I have every confidence that your judgment in this matter will be just, but tempered with mercy.

Sincerely yours,

William C. Keady

William C. Keady

WCK/ja

cc: Judge Walter L. Nixon
1204 Iola Rd.
Ocean Springs, MS 39564

March 20, 1986

Honorable James H. Meredith
U. S. District Judge
1114 Market Street
St. Louis, Missouri 63101

Dear Judge Meredith:

This letter is written concerning my personal friendship and relationship with Judge Walter L. Nixon over the past approximate 15 years. Our families have been close personal and social friends over this period of time, having spent time in one another's homes as well as taken numerous family vacations over the years.

We have attended numerous sporting events including our rival alma mater football game involving the University of Southern Mississippi where I competed athletically and Tulane University where Judge Nixon was an athlete. Of course, my participation was longer ago than Judge Nixon's; although, we continue to strongly support our respective teams and enjoy participating in attending the annual USM/Tulane sporting events. Further, we have spent numerous hours over the past 15 years involved in fishing expeditions often times returning empty handed.

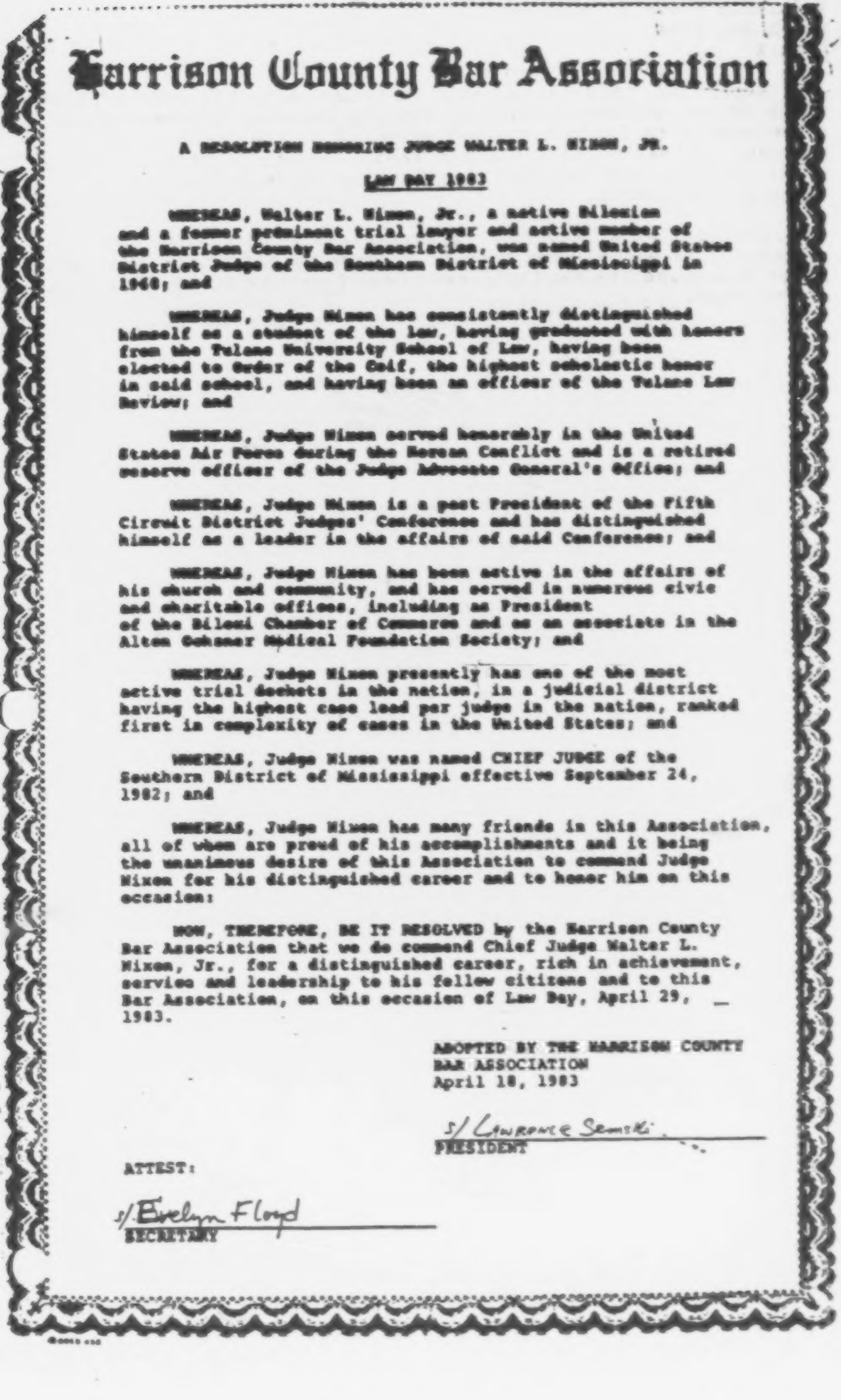
While associated through my friendship with Walter Nixon, I have personally observed the highest degree of personal, moral, and ethical character both professionally and personally. As a layman, I have had few opportunities to be directly involved in his work as a professional, but feel as a result of my limited professional involvement and extensive personal involvement and friendship that Judge Nixon deserves every due consideration concerning any of the upcoming events or legal procedures regarding that past trial, any new trial, and/or full consideration of his past background and exemplary life both before taking the bench and while serving on the district court of Mississippi regarding any sentence imposed by this Court. Personally, my feelings after having observed parts of that prior trial as well as the extensive pre-trial publicity in the local area are that no public or other interest would be served by he or his family being subjected to any further humiliation.

Hopefully, this letter will be accepted in the spirit in which it was written through my lengthy personal friendship and associated with Judge Nixon and accepted by the Court as my personal expression of a man and family of the highest personal, moral, ethical and judicial character as reflected during our years of friendship.

Should I be of any further assistance to the Court in reflecting my experiences through friendship and association with Judge Nixon and his family please feel free to contact me at your convenience.

Sincerely yours,

C. L. Dews, Jr.



# Harrison County Bar Association

A RESOLUTION HONORING JUDGE WALTER L. NIXON, JR.

LAW DAY 1983

WHEREAS, Walter L. Nixon, Jr., a native Biloxian and a former prominent trial lawyer and active member of the Harrison County Bar Association, was named United States District Judge of the Southern District of Mississippi in 1968; and

WHEREAS, Judge Nixon has consistently distinguished himself as a student of the law, having graduated with honors from the Tulane University School of Law, having been elected to Order of the Coif, the highest scholastic honor in said school, and having been an officer of the Tulane Law Review; and

WHEREAS, Judge Nixon served honorably in the United States Air Force during the Korean Conflict and is a retired reserve officer of the Judge Advocate General's Office; and

WHEREAS, Judge Nixon is a past President of the Fifth Circuit District Judges' Conference and has distinguished himself as a leader in the affairs of said Conference; and

WHEREAS, Judge Nixon has been active in the affairs of his church and community, and has served in numerous civic and charitable offices, including as President of the Biloxi Chamber of Commerce and as an associate in the Alton Ochsner Medical Foundation Society; and

WHEREAS, Judge Nixon presently has one of the most active trial dockets in the nation, in a judicial district having the highest case load per judge in the nation, ranked first in complexity of cases in the United States; and

WHEREAS, Judge Nixon was named CHIEF JUDGE of the Southern District of Mississippi effective September 24, 1982; and

WHEREAS, Judge Nixon has many friends in this Association, all of whom are proud of his accomplishments and it being the unanimous desire of this Association to commend Judge Nixon for his distinguished career and to honor him on this occasion:

NOW, THEREFORE, BE IT RESOLVED by the Harrison County Bar Association that we do commend Chief Judge Walter L. Nixon, Jr., for a distinguished career, rich in achievement, service and leadership to his fellow citizens and to this Bar Association, on this occasion of Law Day, April 29, 1983.

ADOPTED BY THE HARRISON COUNTY
BAR ASSOCIATION
April 18, 1983

s/ Lawrence Semski
PRESIDENT

ATTEST:

s/ Evelyn Floyd
SECRETARY

EXHIBIT N - 1 (a)

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

FILED

MAR 1 9 1982

Marian Brown
CIRCUIT CLERK

VERSUS CAUSE NUMBER 10,041

REDDITT ANDREW FAIRCHILD DEFENDANT

## O R D E R

ON THIS DAY this Cause came on for sentencing, on the State of Mississippi, and the Defendant, by and through his Attorney of Record, the Honorable William Porter, making it known to the Court, that said Defendant has recently undergone a back operation, and is physically unable to attend Court at this term, and respectfully requesting that the matter be set for the July Term for sentencing or at an earlier date if the Defendant has recouperated, and the Court after hearing said Motion, finds that it is well taken and should be sustained.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the above styled and numbered matter be. the same is hereby, continued for sentencing until the July Term, 1982.

SO ORDERED AND ADJUDGED on this the 19th day of March, A.D., 1982.

CIRCUIT COURT JUDGE

EXHIBIT N - 1 (b)

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

FILED
Marian Brown
CIRCUIT CLERK

JUN. 25 1982

STATE OF MISSISSIPPI

v. CIVIL ACTION NO. 10,041

REDDIT ANDREW FAIRCHILD DEFENDANT

## MOTION TO DEFER SENTENCING

COMES now the Defendant, REDDIT ANDREW FAIRCHILD, and moves for this Honorable Court to defer sentencing until the August, 1982, term of Circuit Court. In support of this Motion, your Defendant would show that he had back surgery recently at Ochsner Medical Center, New Orleans, Louisiana, where the L-4 and L-5 discs were removed on the left side. Defendant has not recovered from surgery and needs additional time before sentencing.

Respectfully submitted,

William F. Porter
BY: WILLIAM F. PORTER, OF COUNSEL

WILLIAM F. PORTER
ATTORNEY AT LAW
P. O. BOX 1469
HATTIESBURG, MS 39401
TELEPHONE: (601) 545-7010

# EXHIBIT N - 1 (c)

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

FILED

JUN 25 1982

Marian Brown
CIRCUIT CLERK

STATE OF MISSISSIPPI

v. CIVIL ACTION NO. 10,041

REDDIT ANDREW FAIRCHILD DEFENDANT

## ORDER

THIS DAY this cause came before the Court on Motion to Defer Sentencing until the August, 1982, term of Circuit Court and the Court after having been fully advised in the premises finds that the Motion is well taken and should be sustained.

IT is, therefore ordered that the Defendant in Civil Action No. 10,041 be brought before this Court for sentencing during the August, 1982, term of Court.

SO ORDERED and ADJUDGED on this, the 25th day of June, A. D., 1982.

CIRCUIT JUDGE

EXHIBIT N - 1 (d)

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

FILED

JUL 12 1982

CIRCUIT CLERK

STATE OF MISSISSIPPI

VERSUS CAUSE NUMBER 10,041

BEDOITT ANDREW FAIRCHILD DEFENDANT

## O R D E R

ON THIS DAY this Cause came on to be heard upon Motion of the Defendant, by and through his attorney of record, the Honorable William Porter, to continue the above styled and numbered matter for sentencing, for the reason that the Defendant has recently undergone surgery and for other health related reasons, and the Court after considering the Defendant's Motion, finds that it is well taken and should be sustained.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the above styled and numbered matter is hereby continued for sentencing in the above styled and numbered cause until the next November, 1982 term of Court.

SO ORDERED AND ADJUDGED on this the 12th day of July, A. D., 1982.

CIRCUIT COURT JUDGE

EXHIBIT N - 1 (e)

FILED
NOV 15 1982
Marian Brown
CIRCUIT CLERK

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS CAUSE NUMBER 10,041

REDDITT ANDREW FAIRCHILD DEFENDANT

## ORDER

ON THIS DAY this Cause came on to be heard upon the Joint Motion, ore tenus, the Defendant, by and through his attorney of record, the Honorable William Porter, and the State of Mississippi, by and through the Office of the District Attorney, to continue the above styled and numbered matter for the Term for sentencing purposes, for the reason that said Defendant is presently having physical problems and, further, the State of Mississippi would also show that the Co-defendant involved here, has been apprehended in the State of Florida, the State of Mississippi expects to extradite him within the foreseeable future, and the Court after considering the same, FINDS that the Defendant would not be prejudiced to continue the matter for sentencing, and the Motion should be sustained.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the above styled and numbered matter be, the same is hereby, continued.

SO ORDERED AND ADJUDGED on this the 15th day of November, A.D., 1982.

# EXHIBIT N - 1 (f)

FILED
JAN 25 1984
Marian Brown
CIRCUIT CLERK

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS

CAUSE NUMBER 10,041

ANDREW REDDITT FAIRCHILD

DEFENDANT

## ORDER OF CONTINUANCE

ON THIS DAY this Cause came on to be heard upon Motion of the Defendant, by and through his attorney of record, the Honorable Jolly Matthews, to continue the above styled and numbered Cause and waiving a speedy trial, and the Court having heard and considered said Motion, finds that no prejudice would result to the Defendant because of said continuance and that said Motion should be sustained.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the above styled and numbered Cause be, the same is hereby, continued for the Term and Defendant has waived his right to a speedy trial for this Term.

SO ORDERED AND ADJUDGED on this the 24th day of January, A.D., 1984.

CIRCUIT COURT JUDGE

STATE OF MISSISSIPPI

COUNSEL FOR DEFENDANT

# EXHIBIT N - 1 (g)

FILED
MAR 1 9 1984
Marian Brown

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS

CAUSE NUMBER 10,041 ~~10,030~~

REDDITT ANDREW FAIRCHILD

DEFENDANT

## ORDER OF CONTINUANCE

ON THIS DAY this Cause came on to be heard upon Motion of the Defendant, by and through his attorney of record, the Honorable Caroll Ingram, to continue the above styled and numbered Cause and waiving a speedy trial, and the Court having heard and considered said Motion, finds that no prejudice would result to the Defendant because of said continuance and that said Motion should be sustained.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the above styled and numbered Cause be, the same is hereby, continued for the Term and Defendant has waived his right to a speedy trial for this Term.

SO ORDERED AND ADJUDGED on this the 19th day of March, A.D., 1984.

CIRCUIT COURT JUDGE

STATE OF MISSISSIPPI

James W. Gladden Jr.
COUNSEL FOR DEFENDANT

# EXHIBIT N - 1 (h)

FILED
JUN 1 1984
CIRCUIT CLERK

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS

CAUSE NUMBER 10,041

REDDETT ANDREW FAIRCHILD

DEFENDANT

## ORDER OF CONTINUANCE

ON THIS DAY this Cause came on to be heard upon Motion of the Defendant, by and through his attorney of record, the Honorable Karl Kepper, to continue the above styled and numbered Cause and waiving a speedy trial, and the Court having heard and considered said Motion, finds that no prejudice would result to the Defendant because of said continuance and that said Motion should be sustained.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the above styled and numbered Cause be, the same is hereby, continued for the Term and Defendant has waived his right to a speedy trial for this Term.

SO ORDERED AND ADJUDGED on this the 1st. day of May, A.D., 1984.

CIRCUIT COURT JUDGE

Glenn L. White
STATE OF MISSISSIPPI

Karl W. Kepper
COUNSEL FOR DEFENDANT

EXHIBIT N - 1 (i)

FILED
AUG 3 1984
Marian Brown
CIRCUIT CLERK

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI
VERSUS
REDDIT ANDREW FAIRCHILD,
Defendant

CAUSE NUMBER
10,041

## ORDER OF CONTINUANCE

THIS DAY this cause came on to be heard on motion ore tenus for continuance, the defendant, Reddit Andrew Fairchild, by and through his attorney of record, and after the Court having fully heard and considered said motion finds:

That a Federal Grand Jury is in session and is considering matters related to the above cause, and that said cause should be continued until the November, 1984, Term of Circuit Court.

IT IS, THEREFORE, THE ORDER AND JUDGMENT OF THE COURT that the motion to continue for sentencing in the above styled and numbered cause to the November, 1984, Term of Circuit Court should be, and it is hereby, sustained.

DONE, ORDERED AND ADJUDGED, on this the 3rd day of August, A.D., 1984.

CIRCUIT JUDGE

EXHIBIT N - 1 (j)

FILED
NOV 28 1984
Marian Brown
CIRCUIT CLERK

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS CAUSE NUMBER 10,041

REDDITT ANDREW FAIRCHILD DEFENDANT

## O R D E R

ON THIS DAY this Cause came on to be heard upon the Joint Motion of both the Defendant, by and through the Attorney of Record, Honorable Karl Kepper, and the State of Mississippi, by and through the Office of the District Attorney, to continue the above styled and numbered Cause for sentencing, for the reason that the Defendant's father is due to go on trial the first part of December, 1984, the Federal Government has indicated that the trial may involve dealings with the above styled and numbered Cause, and while the State of Mississippi, has been cooperating with the Federal Government, the State of Mississippi has not been privy to all of the material collected with reference to this investigation, and delaying the Matter for sentencing would enable this Court to have the benefit of all Matter which was introduced at trial, and further that the Defendant would waive any right for a speedy sentencing hearing, and the Court after considering the same, finds that the Motion was well taken and should be sustained.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the above and foregoing Cause is hereby Continued for Sentencing with reference to the Defendant, Reddett Andrew Fairchild until the January, 1985

Term of Court.

SO ORDERED AND ADJUDGED on this the 21st day of November, A.D., 1984.

CIRCUIT COURT JUDGE

APPROVED AS THE FORM:

GLENN L. WHITE
DISTRICT ATTORNEY

KARL KEPPER
ATTORNEY FOR DEFENDANT

EXHIBIT N - 1 (k)

FILED
APR 9 1985
Marian Brown
CIRCUIT CLERK

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI, *

Plaintiff, *

v. * CASE NO. 10,041

DREW FAIRCHILD, *

Defendant. *

## PLEA BAR - PLEA OF AUTREFOIS CONVICT OR MOTION TO DISMISS

Comes now Drew Fairchild, Defendant, by his attorney, and for plea says:

The State ought not to further prosecute this indictment against him because at a regular session of the United States District Court of Mississippi on, to-wit, March 29, 1985, this Defendant was indicted, entered a plea of guilty and was adjudged guilty for the same act charged in the indictment herein.

A certified copy of the Federal indictment and the Judgment of Conviction therein are attached hereto as Exhibits A and B and incorporated herein by reference.

Further prosecution of this indictment is barred under the provisions of Section 41-29-151 Code of Mississippi.

WHEREFORE, premises considered, Defendant prays that this Honorable Court will dismiss the present indictment and discharge this Defendant.

Respectfully submitted,

BARRY HESS
301 St. Joseph Street
Post Office Box 1706
Mobile, Alabama 36633
Telephone: (205) 432-4546

Wallace Gunn
WALLACE GUNN

## CERTIFICATE OF SERVICE

I do hereby certify that I have, on this the 9th day of April, 1985, served a copy of the foregoing upon the District Attorney for Forrest County, by placing a copy of same in the United States mail, properly addressed and first class postage prepaid, or I have hand-delivered the same.

BARRY HESS

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
Hattiesburg Division

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
MAR 20 1985
[illegible], CLERK
BY R. Luker DEPUTY

UNITED STATES OF AMERICA )
)
v. )
) CR. No.
REDDITT "DREW" FAIRCHILD, ) H85-0005
)
Defendant. )

## INDICTMENT

THE GRAND JURY CHARGES:

## COUNT ONE

1. From on or about February, 1980 and continuously thereafter up to and including August 4, 1980, in the Southern District of Mississippi and elsewhere, Defendant REDDITT "DREW" FAIRCHILD together with unindicted co-conspirators Robert Royals, Robert L. Watkins, Charles Malone, Malcolm "Duffy" Nathan, Mario Torres, and Kenneth Hatfield, willfully and knowingly did conspire, confederate, and agree together with each other and with others whose names are known and unknown to the Grand Jury, to import marijuana, a Schedule I controlled substance, into the United States from Colombia, South America and other locations outside the United States, contrary to Title 21, United States Code, Section 952(a).

### Means and Methods of the Conspiracy

2. It was a part of the conspiracy that:

(a) Unindicted co-conspirator Robert Watkins, with the help of unindicted co-conspirators Malcolm "Duffy" Nathan and Mario

Torres, would and did agree to pilot planes from the United States to Jamaica and Colombia and back to the United States with loads of marijuana;

(b) Defendant REDDITT "DREW" FAIRCHILD, together with unindicted co-conspirator Robert Royals, agreed to assist in the preparation of drug smuggling planes and the landing and unloading of said planes at the Hattiesburg Municipal Airport;

(c) Defendant REDDITT "DREW" FAIRCHILD and unindicted co-conspirator Charles Malone agreed to make arrangements for the offloading and the storage of the marijuana in or near Hattiesburg, Mississippi; and

(d) Unindicted co-conspirators Charles Malone and Kenneth Hatfield agreed to make arrangements for the sale of marijuana.

## Overt Acts

3. In or about the spring of 1980, Defendant REDDITT "DREW" FAIRCHILD met with unindicted co-conspirators Charles Malone, Malcolm "Duffy" Nathan, and Robert L. Watkins, in Hattiesburg, Mississippi to make arrangements for the importation of marijuana into Hattiesburg, Mississippi.

4. In or about the summer of 1980, Defendant REDDITT "DREW" FAIRCHILD made arrangements for the availability of a "stash house" in or near Hattiesburg, Mississippi in which to store marijuana.

5. In or about late July, 1980, unindicted co-conspirator Robert L. Watkins flew an airplane to Colombia, South America, to obtain marijuana.

6. In or about late July or early August, 1980, unindicted co-conspirator Robert Royals was present at the Hattiesburg Municipal Airport and assisted in the preparation and planning for the importation of marijuana into the United States by unindicted co-conspirator Robert L. Watkins.

7. On or about August 1, 1980, Defendant REDDITT "DREW" FAIRCHILD and unindicted co-conspirator Robert Royals drove to the "stash house" and in the course of the trip met with unindicted co-conspirator Charles Malone.

8. On or about the night of August 3, 1980, unindicted co-conspirator Robert Royals was present at the Hattiesburg Municipal Airport waiting for the plane piloted by unindicted co-conspirator Robert L. Watkins to land.

9. On or about the night of August 3, 1980, unindicted co-conspirator Robert Watkins landed an airplane containing approximately 2200 pounds of marijuana at the Hattiesburg Municipal Airport.

In violation of Section 963 of Title 21, United States Code.

A TRUE BILL:

David M. Ward, Jr.
FOREMAN

Reid H Weingarten
REID H. WEINGARTEN

Trial Attorney
Public Integrity Section
Criminal Division
Department of Justice
Washington, D.C. 20530
(202) 724-6974

A TRUE COPY, I HEREBY CERTIFY.
Clarence A. Pierce, CLERK
M. Sullivan

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF MISSISSIPPI

SOUTHERN DISTRICT OF MISS.
FILED
APR 02 1985
CLARENCE A. PIERCE, CLERK
BY ______ DEP

MINUTE ENTRY:
MARCH 29, 1985
PARKER, C. J.

UNITED STATES OF AMERICA

VERSUS

REDDITT "DREW" FAIRCHILD

CRIMINAL

NO. H85-00005

The defendant appeared this date for Rule 5-A Hearing and arraignment.

PRESENT: Jan Little
Counsel for U.S.A.

Barry Hess, Esq.
Counsel for defendant

The defendant waives reading of the indictment, and enters a plea of GUILTY.

The defendant is sworn and questioned by the court.

Statement of Jan Little is read into the record.

The court accepts the guilty plea and refers this matter to the Probation Department for a pre-sentence investigation.

Bond was set at $2,500 personal recognizance.

* * * *

A TRUE COPY, I HEREBY CERTIFY.
Clarence A. Pierce, CLERK
By: ______
Deputy Clerk

# EXHIBIT N - 1 (1)

715

No. ..........

UNITED STATES ..DISTRICT.. COURT

..SOUTHERN...... District of ..MISSISSIPPI.....

..Hattiesburg...... Division

THE UNITED STATES OF AMERICA

vs.

REDDITT "DREW" FAIRCHILD

## INDICTMENT

Violation Charged:
21 U.S.C. §963

FILED
MAR 29 1985
[illegible], CLERK
BY [illegible] DEPUTY

A true bill,
David M. Ward...
Foreman

Filed in open court this .................. day
of ............ , A.D. 19......

.............................................
Clerk

Bail, $ ............

.............................................

FILED
MAY 29 1985
Marian Brown
CIRCUIT CLERK

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI, *

Plaintiff, *

v. * CAUSE NUMBER: 10,041

REDDITT ANDREW FAIRCHILD, *

Defendant.

## MOTION TO QUASH THE INDICTMENT, OR, IN THE ALTERNATIVE, TO DISMISS THE PROSECUTION OF THE INDICTMENT FOR VIOLATION OF A PLEA BARGAIN AGREEMENT

Comes now the Defendant, Redditt Andrew Fairchild, and moves this Honorable Court to quash the indictment, or, in the alternative, dismiss the prosecution on the gounds that it violated the plea agreement reflected on the docket sheet on file in the office of the Circuit Clerk of Forrest County, Mississippi entered March 19, 1982. The plea agreement reached between the Defendant, represented by his then attorney Karl Kepper and the State of Mississippi represented by then District Attorney Bud Holmes and concurred in by then Circuit Judge Jack B. Weldy, was the recommendation of five years probation and a fine as reflected on the docket sheet entry of that date. In consideration of this recommendation the Defendant Fairchild pled guilty to the charge in this indictment and agreed to testify against his co-defendant Watkins.

The Defendant Fairchild did in fact plead guilty and has at all times been ready willing and able to assist the prosecution of the co-defendant by offering truthful testimony concerning the facts of this case. This testimony has not been received against the co-defendant Watkins due to the failure of the State of Mississippi acting by and through its agents, servants and employees to apprehend Mr. Watkins and produce him for trial. Defendant Fairchild incorporates herein by reference the docket sheet entries on the docket sheet in this case relating to the Defendant Watkins.

This Defendant was notified shortly prior to March 8, 1985 that the present District Attorney of Forrest County, Mississippi and the present Circuit Judge presiding over this case would reject the plea agreement made with the State of Mississippi in 1982 and fail to honor its terms.

This Defendant had been cooperating with federal authorities for a substantial time prior to March 8, 1985 concerning the facts relating to the events described in the indictment in this case and other matters in reliance on the State of Mississippi honoring its plea agreement of March 19, 1982.

Upon being informed in open Court in the Circuit Court of Forrest County, Mississippi March 8, 1985 that the State of Mississippi would not honor its plea agreement in this matter the Defendant withdrew his plea of guilty.

This Defendant was subsequently indicted and convicted in the United States District Court for the Southern District of Mississippi for the same facts charged in this indictment. The subsequent prosecution and conviction of this Defendant were the direct and proximate results of the failure of the State of Mississippi to honor its plea bargain with this Defendant entered March 19, 1982. The United States of America would have refrained from prosecuting this Defendant under its Petite Doctrine.

WHEREFORE premises considered, Defendant moves this Honorable Court to make a finding that:

A. Defendant entered a plea bargain with the State of Mississippi March 19, 1982.

B. Defendant entered a plea of guilty March 19, 1982 as a result of the plea bargain.

C. Defendant agreed to testify against the co-defendant Watkins as part of said plea bargain.

D. Defendant has at all times been ready, willing and able to give truthful testimony in cooperation with the plea bargain.

E. The Defendant is not at fault for the failure of the State of Mississippi to produce co-defendant Watkins for trial.

F. The Defendant in reliance on this plea bargain has assisted federal authorities in the further investigation of the underlying facts of this case and other matters.

G. That the Defendant was indicted and convicted by the United States for the matters concerning the facts of this case as a result of the failure of the State of Mississippi to honor its plea bargain in this matter.

H. That the reliance by the Defendant on his plea bargain in this matter has been to his substantial detriment.

I. That as a result of the above the indictment herein should be quashed, or, in the alternative, the prosecution of this case dismissed.

Respectfully submitted,

BY: ______________________
BARRY [illegible]

BY: Wallace R. Gunn
WALLACE R. GUNN
Attorneys for Defendant

CERTIFICATE OF SERVICE

I do hereby certify that I have, on this the 27 day of May, 1986, served a copy of the foregoing upon the Honorable Glenn L. White, District Attorney for Forrest County, Mississippi, by placing a copy of same in the United States mail, properly addressed and first class postage prepaid.

______________________
BARRY [illegible]

EXHIBIT N - 1 (m)

EXHIBIT N - 1 (n)

Filed by the Court on June 14, 1985. KWMck.

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

FILED
JUN 21 1985
Marian Brown
CIRCUIT CLERK

STATE OF MISSISSIPPI

VS. CAUSE NO. 10,041

REDDITT ANDREW FAIRCHILD DEFENDANT

### ORDER OVERRULING AMENDED MOTION TO QUASH THE INDICTMENT, OR, IN THE ALTERNATIVE, TO DISMISS THE PROSECUTION OF THE INDICTMENT FOR VIOLATION OF A PLEA BARGAIN AGREEMENT

ON THIS DAY, there came on for consideration, the Amended Motion to Quash the Indictment, or, in the Alternative, to Dismiss the Prosecution of the Indictment for Violation of a Plea Bargain Agreement, and the Court, prior to hearing the said Amended Motion found as follows:

That, previously, this Court had set Monday, June 10, 1985, as the deadline for the filing and disposition of all pre-trial Motions, and that said deadline was stated in an Order executed by this Court on April 19, 1985.

That, on May 29, 1985, the Defendant, by and through his attorneys, filed with the Clerk of this Court, a Motion to Quash the Indictment, or, in the Alternative, to Dismiss the Prosecution of the Indictment for Violation of a Plea Bargain Agreement; this Court found that the said Motion was never legally noticed for disposition prior to the deadline for the disposition of Motions, but that the Judge of this Court conferred, by telephone, with Honorable Glenn White, District Attorney, and Honorable Wallace Gunn, one of the attorneys for the Defendant, on the date of June 10, 1985, and that, notwithstanding the fact that this Motion had not been legally noticed within the time prescribed by the Uniform Criminal Rules of Circuit Court Practice, and by the statutes, that, by agreement between the District Attorney and the attorney for the Defendant, Mr. Wallace Gunn, that this Motion was set to be heard on June 14, 1985.

SUBPOENA— COURT

# THE STATE OF MISSISSIPPI, FORREST COUNTY

Cause No. 10041

RECEIVED
JUN 1? 1985
SHERIFF'S OFFICE
FORREST COUNTY, MISS.

**To the Sheriff of Said County:**

You are hereby commanded to summon Hon. Reid Weingarten
United States Court House. Main Street. Hattiesburg, Mississippi

State of Mississippi v. Redditt Andrew Fairchild

if to be found in your county, to be and personally appear before the said Court of the County of Forrest, in said state, at the Court House in the City of Hattiesburg, Miss., on the 14th day of June 19 85, at 9:00 o'clock A.M., and there remain from day to day and term to term until discharged by law, then and there to testify on behalf of the Defendant, at whose instance this writ is issued, in a certain case pending in said court wherein State of Mississippi is Plaintiff and Redditt Andrew Fairchild Defendant

and that he in no wise fail to appear, under the penalty prescrib[illegible] then this writ.

FILED
JUN 14 1985
CIRCUIT CLERK

Given under my hand and seal of said Court, and issued this 12th day of June 1985

Marian Brown
Circuit Clerk.

By Susie Russell, D. C.

Wallace R. Gunn
Wallace R. Gunn, Attorney for Defendant

That, in the aforementioned telephone conference, the Judge of this Court, without making any specific ruling on the said Motion, informed the said Honorable Wallace Gunn that the possibility existed that the citing of the date of March 19, 1982, in the said Motion, as the date of the alleged "plea agreement reflected on the docket sheet on file in the office of the Circuit Clerk of Forrest County, Mississippi..." could be an erroneous date, since the only Order on March 19, 1982, in this matter was an Order of Continuance. That Mr. Gunn informed the Court that if the said date were erroneous that the correction would be made in the Motion.

That, on June 12, 1985, the Defendant, by and through his attorneys, filed with the Clerk of this Court an Amended Motion to Quash the Indictment, or, in the Alternative, to Dismiss the Prosecution of the Indictment for Violation of a Plea Bargain Agreement.

That, after a recitation of the above, in the record, that this Court heard and maturely considered the Amended Motion to Quash the Indictment, or, in the Alternative, to Dismiss the Prosecution of the Indictment for Violation of a Plea Bargain Agreement, and that this Court finds that the same is without merit, and should be overruled and denied, in all particulars.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Amended Motion to Quash the Indictment, or, in the Alternative, to Dismiss the Prosecution of the Indictment for Violation of a Plea Bargain Agreement is hereby overruled and denied, in all particulars.

SO ORDERED AND ADJUDGED, on this, the 14th. day of June, 1985.

W. McKenzie

CIRCUIT COURT JUDGE

EXHIBIT N - 1 (o)

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS. Cause No. 10,041

REDDITT ANDREW FAIRCHILD DEFENDANT

FILED
JUL 1 1985
Marian Brown
CIRCUIT CLERK

## ORDER OVERRULING PLEA BAR - PLEA OF AUTREFOIS CONVICT OR MOTION TO DISMISS

---

ON THIS DAY, there came on, for ruling by the Court, the Plea Bar - Plea of Autrefois Convict or Motion to Dismiss, filed previously herein, by the Defendant, which said matter was previously taken under advisement by this Court, as the same is reflected in an Order of this Court, executed April 19, 1985, and filed herein on April 22, 1985, and the Court, after having considered the same, as well as having considered the arguments of the attorneys and their memorandum of law, is of the opinion that the same is without merit, and should be overruled and denied, in all particulars.

IT IS, THEREFORE, ORDERED AND ADJUDGED, that the Plea Bar - Plea of Autrefois Convict or Motion to Dismiss is hereby overruled and denied, in all particulars; and this matter is set for trial on Monday, July 8, 1985, at 10;30 A.M., and this Court also Orders that the deadline for the filing and disposition of Motions has expired, and that this Court will not entertain any additional "pre-trial" Motions.

SO ORDERED AND ADJUDGED, on this, the 1st. day of July, 1985.

CIRCUIT COURT JUDGE

EXHIBIT N - 2

MONS CIRCUIT COURT

STATE OF MISSISSIPPI
COUNTY OF FORREST

Cause No. 3-81-567

FILED
APR 1 6 1981
Marian Brown
CIRCUIT CLERK

To the Sheriff of FORREST County — Greetings:

We command you to summons DREW FAIRCHILD
W. R. Fairchild Construction Co.
Highway 49 By-Pass
Hattiesburg, Mississippi

Defendant(s)

if to be found in your County, personally to appear before the CIRCUIT Court of Forrest County, at a term thereof to be begun and holden for the County aforesaid, at the Court House thereof, in the City of Hattiesburg, Mississippi, to be held at 9 A.M. on the FIRST Monday, the 4th day of MAY A.D., 19 81

then and there to ANSWER TO THE DECLARATION of
WILLIAM F. PORTER
the Plaintiff(s)

against said defendant (s) which was filed at the clerk's office of said Court on the 19th day of March 19 81 Herein fail not, and have you then and there this summons with your return endorsed thereon, showing service of this summons together with a copy of the declaration.

The defendant(s) is/are hereby notified that he shall plead on or before the first day of the term to which this process is returnable or within thirty (30) days after service of process, whichever would cause the pleading to be filed earlier. A failure to enter a plea within the time stated may permit ment to be entered by the default.

Attached hereto is a copy of the above by which this suit was instituted.

Witness my hand as Clerk, with the seal of said Court hereunto affixed this the 20th day of March A.D., 19 81

Marian Brown Clerk

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

FILED
MAR 19 [illegible]
Marian Brown
CIRCUIT CLERK

WILLIAM F. PORTER PLAINTIFF

VS. CAUSE NO. 3-81-567

DREW FAIRCHILD DEFENDANT

## DECLARATION

$\$35^{00}$

COMES NOW the Plaintiff, William F. Porter, by and through his attorney, and brings this, his suit against the Defendant, Drew Fairchild, and for cause of action would show unto the Court the following, to-wit:

I.

That the Plaintiff is an adult resident citizen of Forrest County, Mississippi; that the Defendant, Drew Fairchild, is an adult resident citizen of Forrest County, Mississippi, and may be served with process at W. R. Fairchild Construction Company, Ltd., Highway 49 By-Pass, Hattiesburg, Mississippi, his place of employment, thus vesting jurisdiction over the parties and subject matter hereto.

II.

That heretofore, on the date and for the fair and equitable amount shown on the sworn, itemized statement of account attached hereto as Exhibit "A" and made a part hereof for all purposes, the Plaintiff, at the specific direction and request of the Defendant, furnished to and provided for the Defendant on open account those certain duties and services detailed on Exhibit "A" hereto, for which services the Defendant has become indebted to the Plaintiff.

III.

Despite frequent and amicable demand by the Plaintiff, the Defendant has wholly and obstinately failed, refused, and neglected to pay or satisfy said indebtedness for a

Plaintiff would show that there is a principal sum of $10,000.00 now due and owing, together with reasonable attorney fees and all costs of Court herein.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff brings this, his suit against the Defendant, Drew Fairchild, and demands judgment of, from, and against the Defendant in the principal sum of $10,000.00, together with reasonable attorney fees, interest at the legal rate, and all costs of Court accruing herein.

WILLIAM F. PORTER

BY: J. Douglas Johnson
J. DOUGLAS JOHNSON
Attorney for Plaintiff

P. O. Box 1469
Hattiesburg, MS 39401
545-7010

STATE OF MISSISSIPPI

COUNTY OF FORREST

PERSONALLY came and appeared before me, the undersigned authority at law in and for said county and state, WILLIAM F. PORTER, who upon oath deposes and says that the statement of account attached hereto as Exhibit "A" and made a part hereof as if fully copied at length herein is a true and correct statement of the claim and account which William F. Porter has, asserts, and files against Drew Fairchild for $10,000.00; that Affiant has personal knowledge of the correctness of said account and amount claimed is justly due and owing from Drew Fairchild after allowing all proper offsets and credits, and the same now constitutes a subsisting demand and claim for $10,000.00 and that Affiant is duly authorized to make affidavit.

William F. Porter
WILLIAM F. PORTER

SWORN TO and subscribed before me on this, the 19th day of March, A.D., 1981.

Wendy Sue Nobles
NOTARY PUBLIC

My Commission Expires:
May 26, 1982

LAW OFFICE OF
WILLIAM F. PORTER
608 WEST PINE STREET
HATTIESBURG MISS 39401

BOX 1469

PHONE 601-545-70[illegible]

March 19, 1981

Mr. Drew Fairchild

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FOR PROFESSIONAL SERVICES RENDERED

Re: United States of America vs. Drew Fairchild
State of Mississippi vs. Drew Fairchild

Balance from previous statement-----------------------$ 10,000.00

EXHIBIT "A"

EXHIBIT N - 3

U.S. Department of Justice

RHW:ab
186-41-169

Washington, D.C. 20530

MAR 5 1985

Honorable Glenn L. White
District Attorney, Forrest County
Post Office Box 866
Hattiesburg, Mississippi 39401

Dear Mr. White:

I am an attorney with the Public Integrity Section of the Criminal Division of the United States Department of Justice and I am supervising the federal grand jury investigation now underway in Hattiesburg. In that regard I have come to know Drew Fairchild, who I understand is scheduled for sentencing on March 8, 1985 before Judge McKenzie in one of your cases. I am writing to advise you of our relationship with Mr. Fairchild.

Drew Fairchild has cooperated with us in our work. His cooperation has included grand jury testimony that we believe to be truthful as well as his availability for less formal interviews that have proven valuable to the investigation. Because our grand jury investigation is both ongoing and extremely sensitive, we cannot get into the substance of Mr. Fairchild's cooperation at this time. It is fair to say that Mr. Fairchild's cooperation has been very useful to us and we expect it to continue to be useful in the future.

It is our preference that if this letter is to be submitted to the Court for purposes of sentencing that it be submitted under seal and not be made part of the public record.

Sincerely,

Reid H. Weingarten
Trial Attorney
Public Integrity Section
Criminal Division

EXHIBIT N - 4

U.S. Department of Justice

RHW:JNL:ab
186-41-162

Washington, D.C. 20530

January 7, 1986

Mr. Michael S. Fawer
Fawer, Brian, Hardy & Zaczkis
700 Camp Street
New Orleans, Louisiana 70130

Re: United States v. Nixon
CR. NO. H85-00012(L)

Dear Mr. Fawer:

At our meeting on January 3, 1986, you stated that you understood that the federal government had made some sort of "deal" with Drew Fairchild prior to his federal indictment which included a resolution of his sentence in the state system. We responded that there was no federal plea bargain with Drew Fairchild, but that we would review our files to insure that there were no other favors or deals given to him. After reviewing our files we have the following information to report to you.

In 1984, Drew Fairchild began cooperating with the federal government in its investigation of the transactions between Wiley Fairchild and Judge Nixon, and in its investigation concerning the 1980 drug case. Drew's state sentence was continued several times during 1984, at his request, in part because of the federal investigation.

Drew Fairchild was scheduled to be sentenced in state court on March 8, 1985, and in contemplation of that, on March 5, I sent a letter to District Attorney Glenn White detailing Fairchild's cooperation. You have a copy of this letter.

On March 8, Fairchild's state plea agreement was vacated, Fairchild withdrew his guilty plea, and a trial date of May 13 was set for his state charges.

Shortly thereafter, Fairchild's attorney contacted us and requested that we proceed federally against Fairchild. No agreements, deals, or promises were made with this attorney.

In mid-March, we decided to seek an indictment of Drew Fairchild. While the request of Fairchild's attorney was noted, it was but one of several factors weighing into the decision to recommend an indictment. The primary factor was our belief that by March, 1985, the drug case was a federal matter that could best and most fairly be handled in Federal Court. Fairchild was indicted on March 29, and he pleaded guilty on the same day. There was no plea agreement; he pleaded guilty to the entire indictment.

Fairchild's federal sentence was scheduled for July 11, 1985. Prior thereto, Fairchild's attorneys, the District Attorney, and Judge McKenzie apparently negotiated a deal regarding Fairchild's state sentence. While Fairchild's attorneys advised us of this development, we played no part at all in this deal.

After Fairchild reported to Federal prison he filed a Rule 35 motion, which we opposed and which was denied.

I believe this will answer your questions about our negotiations with Drew Fairchild.

Sincerely,

Reid H. Weingarten
Trial Attorney
Public Integrity Section
Criminal Division

cc: Honorable James H. Meredith
Chief United States District Judge
Eastern District of Missouri

# EXHIBIT N - 5

FD-302 (Rev. 3-8-77)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/29/83

An unidentified male who declined to furnish his identity during a previous call on November 3, 1983, again telephoned the Pascagoula, Mississippi, FBI Resident Agency and furnished the following information. The following is a verbatim transcript of the conversation between the unidentified male caller and SA K. P. White-Spunner, Jr.:

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Investigation on 11/10/83 at Pascagoula, Mississippi File # JN 58B-109-18

by SA K. P. White-Spunner, Jr./val Date dictated 11/22/83

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency. It and its contents are not to be distributed outside your agency.

Unidentified Male: Hello.

White-Spunner: Hello.

UM: Are you there?

WS: Hello.

UM: Hello.

WS: Hello.

UM: You there now?

WS: Yeah, I hear you. It sound like it was disconnected.

UM: It did off and on a couple of times.

WS: It rang once and then ah-

Hello.

UM: Are you still back there?

WS: I'm still back here.

UM: Okay-

WS: What kind of a phone are you talking on (laughing).

UM: It's one of these ah deregulated AT&T.

WS: Oh, my gosh. Okay- Are you still there?

UM: I'm still here.

WS: Okay-

UM: Looks like we're gonna have to put up with that.

WS: Okay. Look here. Ah we have problems but not insurmountable problems. Ah, in order to try to keep things ah as secure as we possibly can, it is extremely difficult for us to go directly to Getty Oil Company. Ah this is the feeling of people at Headquarters, and I'm not talking about Headquarters in Jackson. I'm talking about back in Washington. Ah they don't know whether they need a subpoena to get the information or whether we can walk in there, you know up-straight like I told you last week when we talked and asked for it. Ah that's where it stands right now. We don't wanna do anything within this state which may jeopardize you.

UM: Okay.

WS: So ah I am dealing directly with the Department of Justice, a Deputy Assistant, Chief of a Public Integrity Section. His name is Bob Richter.

UM: Okay.

WS: And he would like, at some point in time, to talk with you. Ah, of course that's up to you.

UM: I'm really hesitant on this. I can give you a few more ideas, and maybe some of these can go with, with me still staying in the background as it stands right now.

WS: Okay.

UM: Okay, let me see. I made a few notes here so I wouldn't forget anything. Okay, first of all the checks are gonna run through the accounts ah of ah, of Fairchild.

WS: Uh-huh-

UM: But now I was gonna suggest that you check those bank accounts, but he's a director in that bank. So the first time you walk in and ask any questions of that, at the bank-

WS: What bank is that now?

UM: It's the Bank of Hattiesburg-

WS: Oh-

UM: In Hattiesburg, Mississippi-

WS: Okay.

UM: Ah, he being a director, somebody'll pick up the phone and call him immediately-

WS: You, you're right. That's right.

UM: Okay. Ah, you might want to talk to some of the former employees.

WS: Of who?

UM: Of, of Fairchild that ah might have knowledge of this. There're some current employees- This is where I got most of my information-

WS: Okay-

UM: From talking to them.

WS: Okay.

UM: Ah, let me see.

WS: Who would be some former employees that you might know of?

UM: Well, I, that'd tell you who I've been talking to (laughing)-

WS: Oh, okay-

UM: Ah, let's just put it this way. Since ah, say since the, the end of 19- Let's say

December of 80, anybody since then, and
put you in the ball park of who I talked
to.

WS: In other words anybody who has been working
or has quit since then.

UM: Right, right-

WS: Wait, wait now. Anybody who's quit since
then or who's worked-

UM: Those are one, those are the main ones who'll
be willing to talk to you. The ones that are
still there'd be afraid to.

WS: Okay. What have they got, an ax to grind or
something against him?

UM: I don't know. It's ah- I tripped and fell
over this stuff, and I've been sittin' on it
and going holy shit-

WS: Yeah-

UM: And didn't know what to do with it.

WS: Okay. Ah-

UM: So I- One thing led to another, and curiosity
got the best of me, and I started asking
questions.

WS: Okay. Let me ask you a question now. On the
checks, you say, they're gonna all come in on
ah, at the Fairchild's account at the Bank of
Hattiesburg-

UM: Okay-

WS: Are these the royalties checks?

UM: Right. You know I told you there were three,
three properties.

| | |
|---|---|
| WS: | Right. |
| UM: | One of them will go through Getty's payments. Getty's paying the royalty on that. That's the one- That's the interest that I gave you to check out in Houston. The other two are handled strictly out of the office in Hattiesburg, and the checks'll go, go out of the office and, and go through the bank account of that company. |
| WS: | Okay (unintelligible). Then in other words, the other two wells are not Getty ah- |
| UM: | No, no. |
| WS: | Okay. And, and they will be checks payable to the judge, right? |
| UM: | Right. |
| WS: | As far as you know. I mean, they may be payable to some relative of his or some company that's been set up to- |
| UM: | The information I have, they're paid directly to him. |
| WS: | Okay, ah- |
| UM: | From what I understand also, the judge's secretary- I don't know how much knowledge she has of what, of about this, but she has handled part of it. |
| WS: | Do you know the judge's secretary? |
| UM: | Do you know her? |
| WS: | Yeah. |
| UM: | I know who she is. |
| WS: | Okay, then you know she used to work for us, |

right?

UM: Yeah, I don't think she knows what she's got. I really don't.

WS: Probably not, probably not, yeah.

UM: I think, I think that she's ah- Every, from, from everything that people tell me, she's pretty, pretty straight.

WS: Yeah, right, right. Ah I would attest to that, I think, myself. Ah-

UM: Well, that, that's the, the, the scuttlebutt that I get coming back.

WS: Okay-

UM: But ah she, she knows about the assignments though.

WS: Okay, ah- Um- Here, okay, here- Let me, let me just mention how, you know, this- Your call last week hit a very ah, very sensitive button, let us say, and we're really very sensitive about protecting your confidentiality, ah which is what you want I a, I assume-

UM: Yes, above all-

WS: Ah, this, again I say, is being handled. There are ah- Nobody, very few people outside of the other people who have to handle my correspondence- Other people don't know about this.

UM: Okay.

WS: The only other one is the name of the person I gave you is Bob Richter back in Washington, D. C.

UM: Okay.

WS: And ah, ah he would even be willing to fly you up there to talk with him if that was necessary. Ah, that, of course, is something for you to consider.

UM: Let me think about that.

WS: O-okay, that's fine, but, I tell you what, I really- Ah based on, you know, what I told you last week, I'd really like to sit down and talk with you. If, you know, if you're gonna trust anybody, you're gonna-

UM: (Laughing)

WS: (Unintelligible)

UM: Ah let me, let me keep that under my hat-

WS: Okay-

UM: I, I'm not ready to do that just yet.

WS: Okay, now ah- You have any other thoughts on this Getty business.

UM: The ah-

WS: Do you know- Okay, this is for example. When we contacted ah without saying anything about the background, we contacted an agent we know out in our Houston Office and ah just asked him what the procedure was ah they used, if they did use any procedure, to go to Getty Oil Company, or any oil company out there, and, you know, get information. And he didn't have any idea because they apparently have no occasion to do it.

UM: Okay, well, I went back and checked my notes-

WS: Uh-huh-

UM: Okay. You know I told you that, that the

Hattiesburg attorney named Ingram was the one who handled the-

WS: Carroll Ingram?

UM: Right-

WS: Yeah-

UM: The negotiations between Fairchild and Nixon.

WS: Right.

UM: Okay in July, on July 21st of 81 he sent a letter to the Houston office ah trying to get them to set up that, that thing for payment for the judge.

WS: Ah he sent a letter to that ah Beckham lady at, that girl you gave, okay-

UM: Right, right, Delores Beckham-

WS: Okay-

UM: Okay and on July 23rd, she wrote him back that there were problems with the ah, with the interest and that she really didn't know how, how to do it because the interest was screwed up.

WS: Uh-huh.

UM: And so then they went through some back and forth correspondence, what I understand, that, that set everything up and got it paying, payable to him.

WS: Uh-huh-

UM: And then Getty should have started cutting the checks to him.

WS: Okay, in other words, it looked to you from reading the correspondence that, that Getty did start cutting the checks to him-

UM: Yes-

WS: Even though she said there might have been some difficulty.

UM: It should have been corrected ah- See this was back in 81-

WS: Right-

UM: We're talking two years later. I'm not-

WS: Right-

UM: Positive it'll be in the pay status.

WS: Okay. Okay.

UM: Now the- Like 1 told you last week, the interest or the conveyance that you saw, and when any questions are asked, they're gonna be shown notes. The- Everything is backdated prior to the date of arrest-

WS: Okay-

UM: Of, of, of Fairchild's son.

WS: Okay.

UM: That was, from what I understand, that was done to get this, to show like it was done prior to, to the whole thing, not at the same time.

WS: Uh-huh, okay, I understand that. See, what we don't wanna do- What we're afraid of right now, and, and it may be we'll end up doing it, but, but right now we're afraid that if we go in to Getty Oil Company and ask for ah, you know, their records concerning ah royalty payments on this Getty ah Rogers, I think it was, ah well-

UM: Uh-huh-

WS: Over here. That's in Mississippi now, isn't it?

UM: Um, yes.

WS: That description, that land, land description you gave me, that township range is in Mississippi?

UM: Yeah.

WS: Okay.

UM: Now I haven't gone to Marion County to see if, if they put this on record. I have not done that yet. I, I should have-

WS: Okay-

UM: Done it before I called.

WS: Okay, in other words, that's where it is, up in Marion County?

UM: Marion County.

WS: Okay, but what our, what our problem is is if we go to Getty Oil Company and ask for these records, ah would they give 'em to us without any question- Would they ah, or would they question 'em ah and still give 'em to us, which might mean a danger that they would inform ah the interest holders that the FBI's looking into this ah for, you know, some unknown reason, which we don't want to do.

UM: Uh-huh.

WS: Ah, or would they say well we'll give you the records, but you'll have to have a subpoena. That is the dilemma that we're faced with right now, and we did not wanna act on it precipitously ah, you know, mainly to avoid the getting, you know, highlighting you-

UM: Right.

WS: Ah, you know, 'course only you know, you know, whether such an approach would ah ultimately get back to you.

UM: I don't think that ah- I don't think that Getty is going to raise any question if it's, if it's handled kind of ah nonchalantly. Now if-

WS: Okay-

UM: You go in there like ah, like gang busters, that's when-

WS: Yeah, well, no, we wouldn't do it that way at all, but ah, you know, some- There're, there are, ah these would be financial records, you see, and it-

UM: Just out of curiosity, could, could the IRS go in there and check it?

WS: Now that's a, ah, I don't know. Ah we have not ah certainly not even touched with IRS on this, and ah we wouldn't wanna do that at this point anyways.

UM: Uh-huh-

WS: Ah, you know, what we're doing, we're dealing with financial records, and there's a financial privacy act which ah, ah covers banking institutions, and I'm not sure whether it would extend to royalty payments coming out of a, of any form of private company. Ah, the chances are it doesn't, but these are things that, you know, Justice Department is gonna have to decide, and these are- Let me ask you a question. You mentioned the last time we talked about, you know, bringing this up to George Phillips at a party in Hattiesburg one time.

UM: Yeah, ah-

WS: When was that?

UM: That was back in ah, I wanna say around Christmas time of eighty-one.

WS: Uh-huh.

UM: From what I understand, one of, one of the ah employees asked him about that.

WS: The Fairchild employee?

UM: Uh-huh-

WS: And-

UM: Asked him about the, how it was handled, and his response was, well it happened before my time and,-and walked away.

WS: He was asking about what, the arrest or what?

UM: Why, well why nothing had been done, why everything was, was just, had just been, been put in, on ice.

WS: Oh, I see, okay. Okay, 'cause I've learned, ah, you know-

UM: I'm, what happened, if I'm not mistaking, now I'm gonna go back over this thing trying to do it chronologically-

WS: Uh-huh-

UM: Back in August the Customs people were following a plane-

WS: Okay-

UM: Coming out of Florida-

WS: Yeah, we got all that.

UM: Okay, you know that ah the refueling stop was there in Hattiesburg-

WS: Yeah-

UM: You know about all that.

WS: Okay.

UM: Okay, during this time ah, from what I understand, several people in, in Covington County where he comes out of-

WS: UH-huh-

UM: And down there at his office, Fairchild made comments about how they were trying to up the ante to get, get him to take care of it.

WS: Uh-huh.

UM: And that they just didn't know how to get him up on the price.

WS: Yeah, okay.

UM: Okay, let me see. There are several people that, that commented that he'd said that to 'em. Now, I have to pick you for a little bit of information.

WS: Try to, go ahead.

UM: Okay. From what I understand, he was concerned about something, that there were a doctor in Meridian that y'all were checking into, and the father made a comment in the wrong place at the wrong time that y'all were checking into that, that he could help the son-

WS: You-

UM: The doctor.

WS: The doc- was this, we were checking into this doctor in connection with what?

UM: With ah, some drug dealings or prescriptions-

WS: Okay-

UM: From what I understand, the father went to Fairchild and wanted him to ah, wanted him to take care of it. See, you know, see if he could keep the son out of hot water.

WS: Uh-huh.

UM: Ah then after, from what I understand, that got Fairchild kinda rattled.

WS: Uh-huh.

UM: And he kinda went under rats for a little bit there.

WS: Um-

UM: But-

WS: Okay, I, I don't know.

UM: See, the, I, I- If, if, if I understand correctly, I think the, the office that was working on that was coming out of New Orleans.

WS: Uh-huh, I, well, no, it woulda been us. I, unless it was Drug Enforcement Administration.

UM: Uh-huh, I, I'm not sure who, whether it was, was whether it was y'all or who it was.

WS: Yeah, I, I don't know ah-

UM: But some-

WS: I can find out though-

UM: Someone had contacted him, and he was really worried about that, that he-

WS: That was Fairchild they contacted-

UM: Uh-huh-

WS: Okay.

UM: Someone had, someone had let him know that he was being checked into.

WS: Ah, okay, well I- It's my understanding ah from discreetly checking, after you called, into this business about ah read it up there in, in ah Hattiesburg that ah, you know, I got, I got filled in, in other words, on what happened up there, and I understand there was a big ah, ah deal in the newspaper because it wasn't handled properly-

UM: Right-

WS: Or wasn't handled at all, and there was a big stink.

UM: It wasn't handled at all. As a matter of fact- See, the deal with Nixon was to keep it shut down on the federal level to get it, get the State to handle it. The State has just sat on it-

WS: The State didn't handle it.

UM: State has sat on it. As a matter of fact-

WS: Uh-huh-

UM: If you go in the courthouse over there and check the file-

WS: Uh-huh-

UM: There is, the, the plea of guilty was entered. It was committed to the files. It was ordered-

WS: Yeah-

UM: Back from the files, and then absolutely nothing has been done with it.

WS: Um, um, um.

UM: Ah, this thing is e- One more thing that the reason the locals showed up at the ah, now this is speculation here-

WS: Uh-huh-

UM: I, I don't know, but the reason the locals showed up is, is that Bobby Chain, the Mayor, is a very close business associate-

WS: Uh-huh-

UM: With Fairchild, and from what I understand- Well, well this was speculation that was told me, was that they think that, that, that the Hattiesburg PD got wind that, that the plane was being followed-

WS: Uh-huh-

UM: And that ah they assumed the bust would be made-

WS: Uh-huh-

UM: So the purpose of the, of the city boys being out there was to, to give 'em an out.

WS: Yeah, okay-

UM: You know, more-

WS: It's possible. Shoot, I don't know-

UM: More or less the calvary-

WS: Yeah-

UM: Instead of ah assistance-

WS: I agree. Let me ask you. When are you gonna be back down this way?

UM: Another week or two. I've got to go up to north Mississippi.

WS: Where in the heck is three, five, two? Where are you calling from?

UM: (Laughing) I'm not gonna tell you that.

WS: Okay.

UM: I'm just bouncing around.

WS: Okay. Ah is there any way I- No way I can contact you?

UM: No. One more thing-

WS: Okay.

UM: Have you got a WATS line?

WS: I've got- Yeah, we've got WATS. We've got FTS.

UM: Uh-huh. What is that?

WS: That's Federal Telecommunications System.

UM: What I was- Every- I hate to shoveling quarters into these damn phone booths to have, to call you back. Can I call you collect and just leave a number and have you return my call, or do you have a WAT- incoming WATS or what?

WS: Well, no. There's no WATS line coming down here to this office. I've got a, you know, a WATS line that connects to our Jackson Office.

UM: Okay.

WS: But it, it wouldn't ah, it wouldn't be good to go through there.

UM: No, okay.

WS: Ah-

UM: I'll just keep shoveling quarters.

WS: Okay well let's do it this way though. Just shovel your quarters and ah, you know, if I'm not here, my partner'll tell you I'm not here.

UM: Okay.

WS: And if I'm here ah, I'll just, you know, get the number and call you right back.

UM: Okay.

WS: This way it'll only cost you a quarter.

UM: Okay. Quarter, hell. She charged me-

WS: (Unintelligible)

UM: Two dollars and five cents.

WS: Oh, she did?

UM: Just kidding-

WS: Yeah, okay-

UM: (Unintelligible)-

WS: Well ah we'll just- I think this'll probably be the best way to do it right now.

UM: Okay.

WS: Ah-

UM: But you, you kinda see what I've got a hold of here though?

WS: I see. Ah, I mean I, I, I don't see, but I see partially.

UM: Okay.

WS: I don't see as clearly as, as you see it because you're more on top of it than I am right now.

UM: There is physical proof in existence that I, I found this out, and I, I think I know where to, where to put my hands on it.

WS: Uh-huh.

UM: There is physical proof in existence that these things were backdated.

WS: Okay, well that's what we need to find.

UM: Okay, is that the key to the whole thing?

WS: Ah, it, it definitely would be a key, a major key.

UM: Okay, what else do you need? Tell me that, because I can, I can put my ear back to the ground.

WS: Ah, put your ear back to the ground on that, and if you get that, that'll be, that'll be great. Ah if, if there is physical evidence of backdating of these things, ah that would certainly prove a lot.

UM: Okay. Okay-

WS: And any other information ah, you know, not including these royalty payments too, that you might come up with.

UM: Okay, well, most of my information has come from current and former employees.

WS: Uh-huh.

UM: And they're all, you know, I don't exactly- I can't come out and ask 'em a question like, like you're coming out and asking me. I have to kinda-

WS: Yeah, know-

UM: Pick, and-

WS: What you're talking about-

UM: And dig, and-

WS: Yeah-

UM: Play a little golf and-

WS: Yeah, okay. I understand.

UM: But all the pieces- I, I've got all but about one or two pieces, and the jigsaw puzzle will be completed.

WS: Okay, well, well put the- See if, see what you can come up with as far as proof of the backdating. Ah, and you probably can come up with that in some correspondence between ah Ingram and Getty. I don't know.

UM: No, uh-uh. It's not there. I checked.

WS: Okay, well-

UM: But I, I found another source that I think, I think may- One, one, one thing about, what about ah the employees that, that, that did the preparation of the instruments? Would-

WS: That would be ah, very definitely.

UM: Okay.

WS: Very definitely.

UM: I, I can pretty well put you on two of 'em, I think-

WS: Okay-

UM: That, that can verify that.

WS: Okay.

UM: Otherwise ah- Do you want- Are you gonna go ahead and start talking to the employees, or do you wanna sit tight on this or what?

WS: Ah it, you know, more or less, you're the one that's ah-

UM: (Laughing)

WS: I, I tell you. Listen. You're the one I'd rather talk to first.

UM: Okay.

WS: Because once we start talking to employees, then-

UM: Yeah.

WS: They might know that, you know-

UM: Okay, I, I do know for a fact that two of the inside employees, one may talk to you in confidence-

WS: Okay.

UM: One will not lie for 'em, but he may just have a stroke and fall over.

WS: Okay.

UM: Ah-

WS: Okay.

UM: The office manager, Billy Riley-

WS: Uh-huh-

UM: Is the one who handles the ah, the royalty payments.

WS: Okay-

UM: For-

WS: Will he talk to us?

UM: I don't think so.

WS: Okay.

UM: But, but okay. Now, now these checks are coming out of two companies that they operate out of that office.

WS: Uh-huh.

UM: One is W. R. Fairchild Construction Company Limited.

WS: Uh-huh.

UM: One is ah Fairchild-Windham Exploration Company.

WS: Fairchild-Windham?

UM: Windham. It's Fairchild-

WS: D-

UM: Hyphen, Windham, W-i-n-

WS: Okay-

UM: D-h-a-m Exploration Company-

WS: Okay.

UM: And ah that lady is- Her name is Margaret Buckley that handles those. She may talk to you in confidence. I don't know.

WS: Okay.

UM: Ah do you, can you- No, I was gonna say would, would Mrs. Clark talk to you about any of this? But she may be too close to the judge.

WS: We would not want to try her-

UM: Okay.

WS: At this point.

UM: Not saying that she would run to him, but her, her loyalty-

WS: Ah her loyalties lie with him.

UM: Right, I can understand that.

WS: Yeah.

UM: So.

WS: Okay. When are you gonna call me next?

UM: Ah, what about ne- Is Thanksgiving next week or the following week?

WS: It's the following week.

UM: I've got to go up to north Mississippi next week. If I can get back down and go through there and talk to any of these folks-

WS: Uh-huh-

UM: It's gonna have to be kinda nonchalant. I'll try and-

WS: Yeah-

UM: Get to them next week.

WS: Okay.

UM: If I can rearrange my schedule for next week.

WS: See ah here's the thing. I, ah why did you call me today?

UM: Why?

WS: Yeah.

UM: You said to.

WS: Well, you said just the end of this week or next week.

UM: Well, I called you today because it was exactly a week from last week.

WS: Okay. Well, okay, that's good enough, but the reason I, I was curious is because tomorrow is a holiday. When I talked to

EXHIBIT N - 6

(REV. 3-8-77)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 12/1/83

The same unidentified male who had previously furnished telephonic information in this matter again telephoned the Pascagoula, Mississippi, FBI Resident Agency. Again declining to reveal his identity, the caller furnished additional information. The following is a verbatim transcript of the caller's conversation with SA K. P. White-Spunner, Jr.:

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Investigation on 11/17/83 at Pascagoula, Mississippi File # JN 58B-109-19

by SA K. P. White-Spunner, Jr./val Date dictated 11/22/83

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(Unrelated telephone conversation)

White-Spunner: Speaking.

Unidentified Male: You wanna call me back.

WS: Yeah, okay.

UM: Okay, it's 969-

WS: Nine, six, nine-

UM: Nine, five, six, four.

WS: Nine, five, six, four.

UM: Right.

WS: Okay, I'll call you right back. You're in the State, aren't you?

UM: Uh-huh, yeah.

WS: Okay, right.

UM: Hello.

WS: Hello.

UM: Okay, I got one or two things. Didn't get a whole hell of a lot for you.

WS: Okay.

UM: You might try checking deposits at the Peoples Bank of Biloxi. Let me give you the account number. It's 007-827-2.

WS: Zero, zero, seven, eight, two, seven, two-

UM: Two, uh-huh.

WS: Okay, what's that, in the name of what?

UM: It should be in the judge's name.
WS: Okay.
UM: I believe you'll find that the ah deposits coming from Fairchild be going in that account.

WS: These are the royalty, the ah payments?

UM: Yeah, uh-huh.

WS: Okay.

UM: Let's see what else have I got here. Pretty much- Oh, ah, I thought of a way to get around your, your problem in ah, in Houston.

WS: Okay.

UM: Is just request a copy of the ah title opinion for that section, copy of the division order title opinion. It's, it should include everybody in there. And then all you've got to do is just tie the, just look for the names.

WS: In other words your ah, okay, would that title opinion be recorded in Marion County?

UM: No, no. The ah, the conveyance should be, that backdated conveyance.

WS: Should be recorded in Marion County?

UM: It should be. I haven't been able to get over there yet. I've been tied up in north Mississippi this week.

WS: Okay, but okay, now, the title opinion for that section that you described-

UM: There should be a copy of it in the Houston Office. They use that to determine who gets how much of, of the production from that well. So there'll have to be a breakdown somewhere in, in the Houston Office, and that won't be ah invading anyone's privacy by going into personal private correspondence.

WS: Okay.

UM: And that, hopefully, that will give you some kind of probable cause to go in and, and do a little more checking.

WS: Okay. Okay, that- See that's one of the problems we have, you know. In order ah, if we- Right now we're, we're still trying to check and see ah how easy or difficult it is to get this information from ah Getty without attracting any undue attention to what we're looking for. Ah, if we-

UM: But ah-

WS: If they said look, we can't give you anything ah barring a subpoena, on what we have right now, we can't get a subpoena.

UM: Can you be real nonchalant? If I can walk in there and get copies, so can you.

WS: Have you done it?

UM: I've been in there.

WS: To Hous- to Getty?

UM: Uh-huh.

WS: Okay, well, I mean, how do you ah, how, how do you do it? I mean, is it ah, is-

UM: You just have to talk very fast out of both sides of your mouth.

WS: Yeah.

UM: Go in there like you're an owner, like you know what you're doing.

WS: Okay, yeah, but I mean, it's not- Let, let me ask you this. If, if what you're doing, if, if you walk in there, if they knew who you were or who you represent ah, you know, legitimately, would they give that stuff to you, or you just, you kind of sli- you doing an in-run on 'em to get, get it when you go in there.

UM: An in-run.

WS: Okay, okay. Ah, so still we might have to-

UM: See, you're gonna be in a position where you got, you got rules to abide by. I don't.

WS: Yeah, I understand that. I mean, our ah, you know, and our rules are pretty, very, very ah structured too. Ah, that's why we haven't made any approach so far.

UM: Ah, can you get access to- I'm trying to think of some way to get into access on the, the Peoples Bank on that in-information on that account.

WS: Ah, again, not without a subpoena. Ah, because see now we're talking very strictly about financial records, and these are gonna be financial records of an individual, and the only way we can get them is either by written permission under the Financial Privacy Act of the individual, who would be the judge, or through a ah grand jury subpoena.

UM: Uh-huh.

WS: And ah, you know, it's good to know the account and the account number, but at this time I think it's premature to try to, you know, go in to get bank records.

UM: Stupid question, but I'm gonna ask anyway.

WS: Sure.

UM: Ah this, while I've been going down th highway I was thinking about this. Ho in the hell you gonna get a grand jury to hear this without him finding out what's going on?

WS: Ah, we'd have a grand- That would be very simple. We'd have a grand jury is ah not even convened in this state

UM: Oh, okay.

WS: See, that would be ah, you know, prob in the District of Columbia, frankly.

UM: Okay.

WS: If, but see, in other words before w That's why I told you. We're dealin directly- We're, we're going around of people who, normally, through the chain of command ah in my outfit, w a sayso on this thing. We're going and dealing with Bob Richter at the of Justice. The name, the same, th told you last week when you called.

UM: Yeah, what was his- deputy director operations?

WS: No, okay, I'll tell you, I'll read title. He is- Hang on one second, Assistant Chief, Public Integrity S Criminal Division, U. S. Departmen Justice.

UM: Well, it certainly sounds impressi

WS: It is, yeah, right. I don't know personally, but I talked to him or you know, and, and ah, he is the person who is the decision maker on everything here, and ah, you know, as I say, he'd like to talk to you, you know, at some point-

UM: Well-

WS: In time, ah-

UM: Right, right now, I'm still scared of the judge, and, you know, we talked about this earlier.

WS: Yeah, right. I, okay, I understand that. I mean, dealing, you know, when you're dealing with something like this, ah, ah even from our standpoint, we've gotta be extremely careful because ah, ah, if, if it ever got back ah, you know, to the judge, or frankly, to Fairchild, for that matter, that we were looking into this, ah, ah, at the very least, as you pointed out in your earlier conversation with me, ah papers might be burned. Ah, and then, of course, other things could be made difficult for us in other ways too.

UM: There's, there's something that I'm tryin to, trying to figure out how to, how to for you, and I'm not real sure. There- what I understand, back in ah- This had be early eighty-one- There was ah- Hang just a minute.

WS: Okay.

UM: From what I understand, ah the one on coast- I've got somebody standing rig so I'm gonna have to be a little cryp

WS: Yeah, okay.

But, but the one on the coast ah wen -- and there was a meeting the three of 'em, and ah there in, in the Hattiesburg office.

WS: Fairchild's office?

UM: Yeah, uh-huh-

WS: Uh-huh.

UM: And this woulda been early in eighty-one.

WS: Uh-huh, okay.

UM: Ah, right about the time, I think that's when the deal was closed.

WS: Uh-huh.

UM: And ah, let's see who, who could verify that. I do know ah one inside, one, one current employee down there that could probably verify that.

WS: Who would that be?

UM: Margaret Buckley.

WS: Okay, that's the name you gave me before.

UM: 'Cause her office is right there by his. She's his bookkeeper.

WS: Okay. Okay, that- Let me ask- Now this is another thing too. Now you were saying last week that, you know, if we talk to former employees or current employees that have been there since ah December, 1980, ah, you know, we'd be coming up with the same information, but, you know, the- We can't, and, and we definitely are not gonna just start blindly ah interviewing employees because, you know, the chances-

UM: Yeah, I know-

WS: Of us talking to some, to the wrong person are greater than hittin' the right one, and, and I think you understand-

UM: Uh-huh-

WS: The problems that we have-

UM: Get the wrong one, it'll go straight back.

WS: You dadgum right. And so what we've got to do, you know if, if you wanna take this thing and, and see it through to the end, you know, as we certainly do, as long as there's some substantive ah, you know, evidence to support your allegation, then we are gonna have to talk to people who probably you've talked to, and-

UM: Uh-huh-

WS: We're gonna have to know, you, you know, that when we approach these people that they're not gonna turn around right after we left and run to Fairchild or run to the judge.

UM: Uh-huh.

WS: And, and, you know, it just boils down to that. It's ah- We're kind of in a box right now.

UM: Well see, I'm not sure about how to approach these folks and say hey, there're some folk- there're some people that I want you to talk to.

WS: Okay but let me, let me ask you, in that regard, why would they have talked to you- I'm assuming they talked to you about this. If, did, they must have had some reason to complain to you about it to begin with.

UM: It kinda started ah comment over a beer.

| | |
|---|---|
| WS: | Yeah. |
| UM: | And all, you know, because it clicked some switches with- |
| WS: | Yeah- |
| UM: | Some people that I'm associated with. |
| WS: | Yeah- |
| UM: | That ah, ah, you know, I, I picked 'em, and each time I'd go back, I'd pick 'em a little more. |
| WS: | Yeah. Okay, but let me ask you this now. Ah, but, and they still talk to you, right? |
| UM: | Uh-huh. |
| WS: | Ah, you could- Ah, what are we talking about, more than one person, right? |
| UM: | I would say you've got one very crucial key in there. One that's gonna make or break the whole thing. |
| WS: | You mean a witness? |
| UM: | Uh-huh. |
| WS: | Is that this Margaret? |
| UM: | Um, no, she'll be, she'll be. She'll be very helpful, but she won't be the crucial one. |
| WS: | Okay. |
| UM: | She'll be the one to put the three of 'em together at the right time. |
| WS: | Okay. Okay, let me ask you, okay, if you- I, I can only speculate that you're pretty close to this person who you think is |

crucial to the case.

UM: Uh-huh.

WS: Ah, is there any reason why you could not discuss privately this, with this person, you know, what you've been talking about for the last few weeks or month or whatever and say, look, have you ever, ah, you know, would you, if you feel so strongly about all this stuff, would you talk confidentially with a friend of mine? You know, is there any ah, ah, because I don't know any other way.

UM: I'm not sure whether he'd clam up on me.

WS: Yeah, I, I just don't know any other way. I mean, the thing is, I'd hate to- See, here's, here's another, here's a restriction we have. In a case like this, we are conducting what we call a preliminary inquiry, and under the rules of the Attorney General of the United States, and we have to go by these rules. It's a law. We have exactly sixty days in which to do something on this case. I don't mean prosecute. We've got, we've got sixty days to show that there is ah a little fire where there's smoke. You know, you're, you're throwing the smoke our way, but we've gotta be able to show there's some fire there, and, and that-

UM: Well, I tell you, the ah- I was reading an article in the paper yesterday about ah one that's confidentiality was lifted-

WS: Uh-huh-

UM: And ah it was less than eight hours later the State no longer had a case. It was in New York. Ah-

WS: You, you mean, talk about like a, a, a source or something like that?

UM: Yeah, there was, there was somebody that, that, the witness in a case in New York that, that ah was eliminated.

WS: Yeah, o-okay, well let me just tell you, okay, from your standpoint- Now, now let me just, let's just talk about it from your, from your standpoint as an individual. I don't know you, and I don't know what your connection is, if any, with the events that have gone on here that we've discussed. Ah, only you are, are aware of that, but I've, I'm-

UM: I'm, I'm more concerned about my friend.

WS: Okay, okay, because you, for example, I think ah you couldn't even be a witness.

UM: I know that.

WS: Because, I mean, un-unless you're a party to any of this stuff.

UM: Right, I'm aware of that, but-

WS: So-

UM: By the same token, I don't wanna, don't wanna bring somebody down a primrose path and get 'em knocked in the head one night.

WS: Yeah, I, I understand what you're saying about. I mean from, for you there's no problem. We would never, ever, ever have to reveal your name under any circumstances. Ah, you know, the only problem there would be with, with you would be if you had information that you, and only you, could testify to, and we needed that information to make a case.

UM: Yeah.

WS: But that apparently is not the case. What you have is, is hearsay of other people. I assume this is correct, right?

UM: Well I've gotten some documentation from 'em, so-

WS: Well, but that, that is stuff that, that we could get-

UM: Right, I-

WS: Documentation-

UM: Yeah, I understand-

WS: Would be no problem. Okay, let me- That's another thing, documentation. Ah, would you have any objection to mailing me a copy of some of that documentation? What I'm looking for is-

UM: You're gonna need, you're gonna need the other person to put this stuff together though-

WS: I, I know-

UM: You're talking about something that ah it's, it's gonna look clean and pretty and neat-

WS: Yeah.

UM: I told you everything was backdated-

WS: I know it. I know it.

UM: You could, you're gonna need that person to put it together.

WS: Okay, and, and this person, I assume, is a person who took part in the backdating.

UM: Right-

WS: Okay.

UM: Prepared the instruments and all.

WS: Okay. Ah, you know, and again, I say,
ah we're, we're not gettin' any closer
to where we wanna be. We're not getti
any closer to supporting the original
allegation. Ah, so you're gonna have
to-

UM: Either pee or get off the pot?

WS: Exactly-

UM: (Laughter)

WS: E-e-exactly, and, and that's why, you
that's why, number one, I don't think-
the probability that you are not a per
who can ah, ah give testimony in some
like this down the road, ah it would
a lot safer for everybody concerned i
I sat down eyeball to eyeball and tal
thing out and thrashed it out, say wh
heck we do, can we do. Because if th
case, I am just as interested in you,
making a case, I am just as intereste
you in, in ah protecting, you know, a
witnesses in the case also. And thes
matters that, that we can discuss. N
might be a good idea to ah, you know,
say there is one key witness to ah, f
to figure out, maybe make some notes,
exactly what this one key witness doe
and, and ah can testify firsthand to,
and also ah, you know, sooner or late
it's, you're gonna have to talk to th
person and say, you know, hey ah woul
be willing to talk to somebody from t
about this thing. You're not, you kr
you're not settin' 'em up or anythin
know, and the, and if the person say

not under any circumstances, then, you know, we might as well get off the streetcar, 'cause we're not going anywhere.

UM: Yeah, okay.

WS: But I think that you're, you know, you're the, right now you're the key.

UM: Well let, let me see what I can do, and ah, in that case.

WS: Okay. Now let, now let me bring up somethin' else too. You know, since you called last week, what- I don't understand yet, really, is- What is Judge Nixon's part in this. Now the reason, now let me go through this, and you can see, maybe what I'm talking about. Okay, August 4, 1980, four people were arrested in Hattiesburg when that plane came in with twenty-two hundred pounds of marijuana.

UM: Uh-huh.

WS: Okay. Ah, two people, two of the people involved, one guy was named Hatfield, and one was, name is Torrez (phonetic).

UM: Hold on just a second.

WS: Okay.

UM: Y'all both need to use the phone? Okay, ah, I'll just have him call me back. I'm talking long distance. How long you think you're gonna need it? Okay, can you call me back in about five minutes at this number?

WS: I'll call you back in ah- Well, I'll give you, I'll give you ten minutes.

UM: Ah, make it five.

WS: I'll call you back in five.

UM: Okay.

WS: Okay, right, bye.

* * * * * * *

Carpenter: FBI.

Overton: Harry?

Carpenter: Yeah.

Overton: Ah-

Carpenter: Oh, I was holding the other line. (Laughter) Okay.

Overton: All right. Ah, that is a pay phone in the lobby of the Walter Sillers, C-i-l-l- or S-i-l-l-

Carpenter: Okay, that's the same place then-

Overton: State Office Building.

Carpenter: That's in the lobby though, right?

Overton: Right.

Carpenter: Okay, fine, Mickey. Certainly do appreciate it.

Overton: Bye-bye.

Carpenter: Thank you.

* * * * * * *

UM: Okay.

WS: Hey.

UM: Appreciate it.

WS: Okay, what did you have, a line standing there to make a call or somethin'?

UM: Yeah-

WS: Okay-

UM: Standing behind me, and I was gettin' to where I couldn't talk to you.

WS: Yeah, okay. Where were we now? Ah-

UM: You were asking specifically what the purpose of the thing, what the payments went for-

WS: Okay, ah, let me, okay, let me just mention it. Okay, this is what I found out from my knowledge of the thing. Okay, four people were arrested, including ah Fairchild's son. Okay, two of those people, a guy named Hatfield, and a guy named Torrez, entered guilty pleas before U. S. District Judge Harold Cox.

UM: Uh-huh.

WS: Each of them was sentenced to five years and fined fifteen thousand. Now, I don't know if you know Judge Harold Cox, but ah-

UM: (Laughter)

WS: If there's anybody who I would consider incorruptible, and I'd bet my salary on it-

UM: I (unintelligible)-

WS: I would say that he is.

UM: That-

WS: Okay?

UM: To my knowledge, none of this filters
his direction.

WS: Exactly. Okay, but this is the key,
the fact that two of, but this, this c
was put on his docket. Okay, now, tha
leaves Fairchild and one other fellow.

UM: The pilot.

WS: Well, whoever he was. Ah, let me see
have his name written down here somew
Okay, anyways, these guys, Fairchild-
I'm gonna tell you this. I don't knc
this is public or not, but I'm gonna
you this ah anyways. Fairchild came
ah he signed a plea agreement with t
U. S. Attorney's Office in exchange
his testimony against the remaining

UM: Uh-huh.

WS: Okay. Ah, the remaining guy- Let m
if I've got his name. Ah, let's se
was a Hattiesburg attorney named Wi
Porter who, who ah-

UM: Who is now-

WS: Who is now dead-

UM: Missing-

WS: Right, missing, right, I, ah-

UM: Uh-huh-

WS: Thought, I thought that name was

UM: Keep going.

WS: Anyways the guy, Porter's client, disappeared-

UM: Uh-huh-

WS: And so they could not, you know, they could not do anything with Fairchild because sentencing him was conditioned on his testifying in the trial against this fourth individual.

UM: Uh-huh-

WS: Okay, finally they located the guy-

UM: Brought him back from Florida-

WS: Brought him back from Florida, exactly right, and- Let me see here now. Their case is gonna come up within the very near future. I was led to believe maybe as early as next month, down here on the Gulf Coast. They've changed venue from Hattiesburg, because of the publicity, to the Gulf Coast. Judge McKenzie, Dickey McKenzie-

UM: Right, he's the Circuit Judge.

WS: Okay, he-

UM: Circuit Judge-

WS: He is gonna hear the case. He is gonna try the case involving this fourth man who is, like you say, must be the pilot. Okay.

UM: Uh-huh.

WS: Ah, Fairchild will be expected to testify against him at that time.

UM: Okay- .

WS: When that case has been disposed of, McKenzie will sentence the man, and he will also sentence Fairchild. Now, th reason why Fairchild and the other mar were not taken before, taken into fede court, was because if they had been, i woulda been Judge Cox who they would h appeared before, and because Fairchi- Judge Cox does not believe in plea bargaining of any kind. So that's why was kept away from him. Now that's, the reasoning that was given to me. A it's logical knowing Judge Cox and knc ah, you know, he's not lenient. Judge will not permit any plea bargaining tc on between the U. S. Attorney's Office any defendant's attorney in his court boy he raises hell for it. I, I witn that myself.

UM: I'm familiar with Judge Cox.

WS: So ah that's- Okay, now, given all of what-

UM: You still don't see the tie-in. I, I there's a-

WS: Well, the tie-in-

UM: Big question mark-

WS: Okay, the tie-in presents a question And, and now you can say well ah, Fai and the judge are longtime cronies.

UM: (Laughing) No that, let me, let me tr put it in the proper prospective, the

WS: O-

UM: The way it was explained to me.

WS: Okay.

UM: Was that it couldn't go straight to the judge, which would be Judge Cox, because, you know, there they could not approach him.

WS: Right.

UM: The idea was to go, was to get Nixon, if anything was filed, to see that it was steered properly. Okay?

WS: Uh-huh.

UM: And that was what the payment was for. Now the thing was steered around. Now I, I don't know. I don't know whether, whether it goes as far as the U. S. Attorney. I doubt it, based on, on, from what I've seen, I doubt it went down that far. I think, I think, really, got paid for doing nothing.

WS: It, it's possible. You, you know, well the- See, okay, I understand that.

UM: Okay, but see-

WS: Okay-

UM: Now, now, on the other side of the coin, from what I understand, you know, this, this was negotiated. Ingram was the go-between, supposedly.

WS: Uh-huh.

UM: Okay, Ingram brings the judge out there to, to the office.

WS: Uh-huh.

UM: They have the little parlay.

WS: Uh-huh.

UM: Okay, the conveyance is run, or the, the deal is cut, Fairchild makes the comment to several people that an, well they're trying, you know, they think they can get the ante upped.

WS: Uh-huh.

UM: But, you know, they just don't know how to, how to deal with me.

WS: Yeah, okay.

UM: Okay, so then a deal is struck.

WS: Uh-huh.

UM: The ante is up. The deal is struck.

WS: Did they strike it at this meeting?

UM: I'm not sure if it was at-

WS: Okay-

UM: The, it, the deal was cut-

WS: Yeah-

UM: How much of the deal-

WS: Okay.

UM: Is what, what, what I'm not sure exactly when that-

WS: Okay-

UM: Was finalized.

WS: Okay.

UM: Okay-

WS: Were, was, was your key witness a, ah in on this at all or not?

UM: I don't know.

WS: Okay.

UM: He may, he may wanna claim immunity before he even talks to you.

WS: Yeah.

UM: Just in case.

WS: Yeah, okay. And, well, I mean, I, 'course I'm not, I can't, I'm no judge. I can't grant anything, but, I- Go ahead, continue.

UM: Okay, but ah, that's, that's where it came from. Okay now, now there're some notes that ah, from what I understand, one of the employees went to Fairchild and said ah, you know, look, you know, it's kinda peculiar that ah you did the, you, you give, give this to the judge, you know.

WS: Yeah.

UM: So ah, from what I understand, about two days later, some mysteriously backdated notes appear.

WS: Uh-huh.

UM: And the employees are laughing about the notes being backdated the same date as the backdated thing, and Fairchild is telling 'em. well see, we had these notes all along-

WS: Um-huh-

UM: And employees are laughing their asses off out there, from what I understand.

WS: Yeah.

UM: But ah that kinda- I, I think what, what, what got my folks really, really convinced or, or the, was the cover-up that was started, trying to cover it up with- See that, then the judge started making payments on these notes, and, and all, you know, it, it, it-

WS: Oh, you mean the judge was making payments on the notes.

UM: These, okay the notes- Let me see. The, the, the deal was cut. The assignments were done in eighty-one-

WS: Uh-huh-

UM: Some time about in eighty-two, they, some notes mysteriously appear.

WS: Are these, ah, when you say notes, you're not talking about-

UM: Promissory notes-

WS: Okay, promissory notes, okay.

UM: Okay, they, they mysteriously appear, and all of a sudden we're starting to catch up on our back payments that we're behind on.

WS: Okay.

UM: So the employees are sitting back laughing, saying look, you know, from what I understand, they were laughing, saying you want us to figure the interest back to eighty when we know we didn't even prepare the damn thing till eighty-one. But, you know-

WS: Yeah-

UM: But that's what got the employees starting to scratch their heads, saying wait a minute something's-

WS: Yeah-

UM: Going on here.

WS: Okay.

UM: And so they-

WS: Ah-

UM: From what I understand, they started putting two and two together and said uh-huh.

WS: Okay, ah-

UM: See, some of this- I can't put everyt right out here before, you know- I, I-

WS: Yeah-

UM: I need your help too.

WS: Yeah, I know it, but I mean, but you where, you see what my difficulty is don't-

UM: You don't have what I have-

WS: I don't have what you have, and I ca and I'm restricted by a 60-day ah de line to, you know, either, you know, or get off the pot. I gotta do some ah-

UM: You know what, you know what my- I, go and talk to the, talk to the guy, I'll tell you what he's gonna, what responses are gonna be.

WS: Okay.

UM: He's gonna say, okay, you're talking about a man with the Federal Government-

WS: Yeah-

UM: Talking about a federal judge-

WS: Exactly-

UM: He's gonna say uh-uh, buddy-

WS: Where else-

UM: No way, Jose-

WS: Okay, where else- I mean, if he has any, well, you know, 'course that really effectively stops any, stops everything, and number one, if you have the only key witness who is unwilling to testify, ah if you have ah, or even to reveal his identity-

UM: Well, see that's why I need, I need to be able to go to him and, and assure him that, that he can be kept confidential. Before I even approach him, I wanna be able to tell him that, and I don't know, at this point, if you-

WS: Okay, the only way to han-

UM: Can tell-

WS: The only way to handle that is, is for you to sit down with him and, and list down point by point everything that he can personally testify to, everything that he can personally attest to-

UM: Well won't that pretty well tell you who he is?

WS: It wouldn't tell me who he is.

UM: Yeah, but if goes to other sources, if it goes to the judge, he'll know who it is.

WS: Well it, it wouldn't- No, but, no- This is not what I'm saying. In other words say, hey, what, what we'd like to know is, okay, what does this guy know. And, and at that point, and when we know what he knows then we can be in a better position to determine whether we can guaran-

UM: Whether it's worth pursuing-

WS: Whether it's worth pursuing and whether we can guarantee that his identity would be protected or, or we could also come back and say look, we can't, we need this guy, if it's ever to proceed any farther than from where it is now, if this is ever to ah go to a, a hearing or to a grand jury, we've got to have him as a witness, otherwise, we can't proceed. You know, that's not- To me that's not asking too much. Ah, ah, you know, somewhere down- You know, you can't, you can't-

UM: I know-

WS: Do any, you can't take any prosecutive action or, or any kind of adverse administrative action against anybody unless you grant them to ri-the right to face their accusers.

UM: I, I'm aware of that-

WS: And-

UM: Okay, let, let me, let me hit him up. Let's see-

WS: Okay-

UM: Next Thursday is Thanksgiving so-

WS: Okay, let's make it ah, and I'm gonna be off next Friday. So-

UM: Can we do it- Let me, let me touch bases with you Wednesday.

WS: O-okay, I tell you what now. Wednesday, I'm gonna be ah gone all morning. Ah-

UM: How 'bout Tuesday?

WS: Ah, I'll-

UM: I'll run down-

WS: I'll be here Tuesday.

UM: I'll run down and, and see if I can't catch him this weekend.

WS: Okay.

UM: And ah, I can't promise you anything, 'cause he-

WS: No, well that's no-

UM: I can't press the issue too much, or he'll clam up on me.

WS: No, okay, that's not, I'm not, but given- Okay, you know what my restrictions are now. And, and, and the chances are we're, we're probably not even gonna be able to get to Getty Oil Company ah, without a, a subpoena. I, I don't know that for sure, but we're, we're still trying to check on that thing. Now, okay, also, if you, in the meantime, to show me some of this documentation, if, if you think you could copy some of it and just drop it in the mail to me. You got a pencil there? I'll give you my address if you-

UM: Hang on just a second, I need that-

END OF TAPE

EXHIBIT N - 7

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 2/7/84

An unidentified male caller telephonically contacted the interviewing Special Agent ~~at~~ about 3:00 PM and furnished the following information. The following is a verbatim transcript of the caller's conversation with interviewing Special Agent. (The transcription is briefly interrupted at one point to allow for a tape to be changed):

Investigation on 2/6/84 at Jackson, Mississippi File # JN 58B-109 - - :

by SA K. P. White-Spunner, Kwb Jr./val Date dictated 2/6/84

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

M. C. OVERTON and Operator: (Testing of Equipment)

WHITE-SPUNNER: Hello, hello.

UNKNOWN MALE: KEN-

WS: Hello.

UM: KEN WHITE-SPUNNER, please.

WS: Hey, speaking.

UM: Okay, can you call me back at 649-9788?

WS: Four, nine, nine, seven, eight, eight?

UM: Right.

WS: Give me- Are you gonna be there for a couple minutes? Hello.

UM: Hello.

WS: Are you gonna be there for about two or three minutes?

UM: Yeah, I can stay here for ten minutes-

WS: Okay, 649-9788.

UM: Right.

WS: Okey-doke-

UM: Okay, thank you-

WS: Bye.

JOHN PROCTOR: Switchboard.

WS: Hey, call back this number for me. It's 649-9788.

PROCTOR: Mississippi number?

WS: Yeah.

PROCTOR: All right, just hold on here, and we'll dial it for you.

WS: Okay-

PROCTOR: Do not-

WS: Use the WATS- Wait, is the WATS line open?

PROCTOR: No.

WS: Okay, it's not open. Just go ahead and dial that number then for me.

PROCTOR: Okay, hold on-

WS: Six, four, nine, nine, seven, eight, eight.

PROCTOR: Got you.

UM: Hello.

WS: Hello.

UM: Are you there?

WS: Yeah.

UM: Did you get what I sent you?

WS: Yes, I appreciate it.

UM: Wasn't anything. It, it was just ah- That was like chumming when you go fishing.

WS: Yeah.

UM: The ah- What I found out is when they originally executed that thing in eighty-one-

WS: Uh-huh-

UM: That that is- That was about the second or third copy that was done. The first one had the correct date and was witnessed by a lady that didn't go to work there till eighty-one. So tie everything into the, into the time frame when, you know, when my people tell me.

WS: Oh, so this is a corrected copy we're looking at-

UM: That's what's on record.

WS: Yeah-

UM: That's what- That's what-

WS: Right, okay, I know-

UM: Finally hit the courthouse.

WS: Okay, right, okay, I know that, okay. Okay. How 'bout ah, you know, how 'bout the third well. You gonna be able to come up with anything on that for me?

UM: Uh-huh. It's down in Mobile County, Alabama.

WS: Mobile County, Ala- Got a description?

UM: It's the Wilkie Gas Unit. Exxon's operating it.

WS: Wilkie, W-i-l-k-i-e?

UM: Right, uh-huh-

WS: Gas Unit?

UM: Right.

WS: Exxon? You have a, a range township-

UM: Range and town- No, but I can come up with it-

WS: Okay.

UM: I'm pretty sure I can. I can go back through some of this-

WS: Okay-

UM: Some of my notes and come up with that.

WS: That is tremendous.

UM: Okay, now what, what needs, what you gotta do is- We gotta come up with the original copies that were done, and they're still in existence, that when, when they originally executed the thing and set it up is eighty-one-

WS: Uh-huh-

UM: It was sent to Ingram's office.

WS: Un-huh-

UM: Okay, INGRAM sent it back and says wait a minute. This shut, you know, this is right here at this time when all this is going on-

WS: Uh-huh-

UM: So we need to backdate it.

WS: Okay.

UM: Okay, he sent it back to FAIRCHILD, from what I understand, and they stuck it in the files.

WS: Okay-

UM: Then, then FAIRCHILD had 'em redo it and backdate it so it would show that they had done all this a year prior.

WS: Uh-huh-

UM: And then they ah- From what I understand, the instrument never was destroyed.

WS: It never was, it's, so it's still in FAIRCHILD'S office.

UM: It's still in existence.

WS: Where would it be in FAIRCHILD'S office?

UM: Probably in the, in the well files, from what I, from what they tell me.

WS: In the well, okay, okay. Ah, okay now, let me ask you. Are you gonna wait another two months to call me?

UM: I didn't have anything to give you. Plus-

WS: Okay, but-

UM: Plus something, something came up too.

WS: What came up?

UM: ROBERT WATKINS disappearing real quick right there, that same time.

WS: Wait, who's ROBERT WATKINS?

UM: The pilot.

WS: Well, he didn't disappear. Was ah-

UM: No, but he's the key that they're holding everything-

WS: Oh, okay, no, no, no, okay, yeah-

UM: Let, let me, let me explain it-

WS: Okay, go 'head-

UM: Just, just a second. I got somebody walking by here.

WS: Okay.

UM: All right. You've got a record network. You know, your deal in Lumberton that's going on with those folks down there?

WS: Uh-huh.

UM: You know your defense attorney now is the former district attorney.

WS: Yeah, okay.

UM: Okay, now there is, there is a regular network. Everything that you had, or whoever is handling that case had better stay very mum 'cause it's going right through the pipeline.

WS: Okay, how do you know that now?

UM: I can't prove it. It's, it's what I'm told. I'm in the same boat you're in-

WS: You mean, you mean-

UM: As far as-

WS: Somebody knows that we've got it?

UM: Got, which, which we talking about now?

WS: Well, okay, what- I'm talking about this case on the oil wells.

UM: Okay, on this one, I don't know if anybody knows but me or you.

WS: Okay.

UM: I hope nobody knows but me or you at this point-

WS: I, that's what we're trying to keep, that's what we're trying to keep down right now.

UM: Okay, but, from what I understand from some of the folks that work out there that ah INGRAM put a squeeze on FAIRCHILD recently for more money-

WS: Uh-huh.

UM: Ah FAIRCHILD refused.

WS: Uh-uh.

UM: Ah, guess who showed up in FAIRCHILD'S office within ten minutes.

WS: Who?

UM: HOLMES. This was back while he was still district- This was prior to Christmas, prior to his leaving office.

WS: Uh-huh.

UM: And from what I understand, ah he laid down the law about we don't complain about anything.

WS: Uh-huh.

UM: But now this is all, you know, people listening at doors and stuff like that-

WS: Yeah-

UM: You know, just when the hollering starts.

WS: Right, okay-

UM: So it- I don't know if you can use any of that.

WS: Okay, look here. Let, let me, let me bring you up to date now. Ah, remember I gave you the name of a fellow from the Justice Department.

UM: Yeah, you gave me Deputy District Director or something-

WS: Yeah, right, BOB RICHTER.

UM: Uh-huh.

WS: Okay. I've already been to Washington once on this thing to talk with him. He's coming down here to Jackson tonight, and we're gonna be meeting again tomorrow all day. So, I, I'm telling you that just to let you know that we're moving forward on this thing-

UM: For me to shake the bushes and come on out.

WS: Well, we need, you know, we're getting to that point. Now let me, let me bring you further up to date. Okay, we have ah, you know, we've got everything that Getty has.

UM: Uh-huh.

WS: And based on what ah, you know, your identifying the second well in Covington County, we're in the process of getting-

UM: L, the L, the L. D. Ross Well.

WS: Yeah, what, what ever it was the name of it, but that's a Union Oil Company well.

UM: Right.

WS: And, and we've gotten that too. Now you've given us this third one, and we'll be able to get that without any problem, I'm sure. Ah, we're reaching the point where we're running out of things that we can do ah covertly, and we're gonna have to-

UM: I can-

WS: And, and-

UM: Well, let- How much, how much can I do before I, before it becomes part of what you do if you, if you understand what I'm asking you-

WS: Get some more correspondence if you can.

UM: Oh, how, how much, well-

WS: Anything.

UM: What if I can, if I can get those instruments-

WS: Yes.

UM: Okay, but now-

WS: What, what, wait, get the instruments that are, the original ones.

UM: Will they kick it out if I do that?

WS: It, it'll be most interesting. Anything you can do along those lines'll be good.

UM: Well, let's just put it this way. You ask no questions, I'll tell no lies.

WS: Yeah, okay, ah- Okay, let me, let me do this while I, I got you on now. We, in looking at the records, ah, you know, we got some names on there, you know. BILLY RILEY, you told me to stay away from him.

M: Yeah.

WS: Ah, okay, another witness on him was R. L.

JARVIS who's listed ah on correspondence as administrative assistant to the old man, I guess.

UM: Uh-huh.

WS: Is he still there?

UM: No.

WS: He's gone?

UM: Uh-huh.

WS: Okay, does he know 'bout- Well, he'd know about all this, wouldn't he?

UM: Uh-h uh.

WS: Okay, now, LYNETTE SMITH is listed as the notary on the two documents, on the two deeds that we have. Okay, now, on some of the ah correspondence going from FAIRCHILD to Getty, it's signed by LYNN S. JONES. Now my guess is that's the same as LYNETTE SMITH.

UM: Right.

WS: Is that the same person?

UM: Uh-huh.

WS: Okay.

UM: She married in the, in the meantime there to a man named BILL JONES.

WS: BILL JONES?

UM: Uh-huh.

WS: Does he run some restaurant down there?

UM: Not that I know of.

WS: That's her husband though, huh? What's he do, do you know?

UM: No, I'm not familiar with him.

WS: Okay, now, ah, there's another name on the letterhead for FAIRCHILD. It's VICTORIA BURT, assistant manager. Who in the heck is she.

UM: Okay, she left there, oh, hell, she left FAIRCHILD back, three, four, five years ago. She's out in Houston now.

WS: Okay. She's not part of this. I mean, her, her name was just on the letterhead. It's not part of any correspondence, or she's not listed as a witness anywhere-

UM: No, if, if I got my date straight, she was gone before any of this ever came up, before the original arrest or anything about-

WS: Okay, now, in trying to construct this whole thing, ah, you know, you know, all I could do was speculate because I don't have access to the people or things that you have access to. In looking at this thing, the people who I would think that would have information ah, you know, that could help us out would be this gal that was a notary, because she would be a party to the backdating.

UM: From what I understand, she's still there though. She may-

WS: She's still there. I'm sure she is.

UM: She, yeah, she may be, she may be shaky.

WS: Okay.

UM: I think-

WS: And okay, how 'bout this R. L. JARVIS?

UM: He may talk to you. It, you'll have to, you'll have to hit him just right though.

WS: What kind of a guy is he, I mean, old, young, or what?

UM: Mid-thirties, early forties.

WS: What's he do now?

UM: I'm not sure.

WS: But is he still down around Hattiesburg?

UM: Uh-huh.

WS: Ah, you know, the problem is this. I don't wanna go- You know, if we go to the wrong person first, then that's gonna open up everything way ahead of time, and some documentation that we wanna get might disappear-

UM: Uh-huh-

WS: So that's what-

UM: Yeah, we talked about that the first time.

WS: Yeah, and that's why I need your help and, you know, even if- You know, if, if you could say, hey, you know, for, in the example of R. L. JARVIS, he'll say, ah, he'll talk, he will talk with you or he won't. You know, at, at least- I feel like a blind man. You know, I know that there're about four or five people, key people, that we need to talk to. Ah-

UM: Okay-

WS: But, but it's probably four out of those five will never talk to us, and I don't wanna talk to the wrong person off the bat.

UM: Okay, well let me, let me see what I can weasel in there, and I, I know a couple of 'em.

WS: Okay-

UM: And-

WS: I mean, I, but I would guess that you must know a couple of 'em.

UM: Ah, plus I'm picking some mutual friends of ours from some things that have been said. So it's, you know, I'm picking up bits and pieces, but everything, the whole puzzle fits.

WS: Yeah.

UM: Now, let me, let me tell you what was speculated to me. You know, you had asked me the question why, back, the last time we talked in November.

WS: Uh-huh.

UM: Okay, from what I understand, back in the seventies, ah the son and the father were working together.

WS: The FAIRCHILDS?

UM: Right, the were, they were both operating there. He moved the son out to the airport, got him set up to where he ran the airport out there.

WS: Uh-huh.

UM: Which is when the stuff really started.

WS: Uh-huh.

UM: And just that, and now just, just ah total speculation-

WS: Uh-huh-

UM: Was that after it got started when-

WS: What are you talkin' 'bout, narcotics?

UM: Uh-huh.

WS: Okay-

UM: Bringing it in-

WS: Yeah-

UM: Using Hattiesburg for refueling spot-

WS: Okay-

UM: Okay, now, there's more speculation to it, in that, ah when the radio came on that ah, that, that the customs people had somebody corralled down there-

WS: Uh-huh-

UM: The two folks were out there, the son and the other guy that, the one that ran to the woods, his name was BOB ROYALS, the one they never caught.

WS: BOB ROYALS.

UM: Uh-huh-

WS: Okay.

UM: Okay, now- Boy, I tell you what, I feel like DICK TRACY, you know.

WS: Okay.

UM: Okay, what happened was ah they set that up several years ago-

WS: Uh-huh.

UM: And speculation is is that the current mayor in Hattiesburg is a business associate. They actually do oil business together in, like in a partnership-

WS: Uh-huh-

UM: With FAIRCHILD-

WS: Uh-huh, legitimate business-

UM: Uh-huh-

WS: Okay-

UM: I, I assume so-

WS: Okay.

UM: But ah, from what, from what speculation was to me is that you're sittin' out here and all of a sudden the people that are under your control have somebody corralled out there-

WS: Uh-huh-

UM: Best thing to do is go ahead and pop 'em in your own jurisdiction so you can control it.

WS: Oh, sure, right. -

UM: So that's how come they got it. Then, then the local district attorney and INGRAM, and all that- Have you figured out any way of tying BILL PORTER'S disappearance in with any of this?

WS: Well, I wanna tell you somethin', ah, and you'll get a big laugh out of this, but ah, about a month after BILL PORTER disappeared, ah, you know, and I was wondering why ah, why you hadn't contacted me, you know, as, as you sai you were going to. Wait, let's see, I talked to you on November seventeenth, and you were gonna call me the followi Thursday-

UM: I was and then they brought ROBERT WATKINS in, and he disappeared, and I thought, oh, hell.

WS: Okay, well see, I didn't attach any significance to that WATKINS thing, be I, you know, being down on the coast, didn't hear about it-

UM: Yeah-

WS: But then when PORTER disappeared, and I thought about it, and I, and then a time went on, I began to think, my Go you know, maybe PORTER'S the guy that been calling me.

UM: No-

WS: Okay. Obviously not-

UM: Obviously not-

WS: Obviously, I mean, but then we immediately checked and verified tha happened the first week in November, ah-

UM: But, but, you, through that, I hope PORTER makes you understand why I, I kinda staying in the shadows-

| | |
|---|---|
| WS: | Sure, I understand that. Do you, okay, let me, you know, I gotta ask you again, you know, I, I still would like to, I'd still like to meet you. |
| UM: | You will- |
| WS: | Ah- |
| UM: | Eventually- |
| WS: | Okay, I mean, ah, but I, I definitely want- Even if you have nothing to tell me, I, I just definitely need for you to contact me on a regular basis. Ah, because I'm gonna have bunches of questions, and even though you might not have somethin' new, I would still- You're, you know, you're a sounding board for me anyways, and, and ah we're gonna be diggin' up stuff that maybe you can answer- |
| UM: | Did you- |
| WS: | For us- |
| UM: | Did you check any of that ah stuff coming out of, out of your New Orleans office where they were checking him for, for the deal. Supposedly some doctor in, in ah Meridian what's that guy- |
| WS: | No, no, see we've been, we have not done that. Ah we, we've not, we have been keeping this as close as possible. Now do you- |
| UM: | Okay, well you think we- |
| WS: | Ah, I mean this, this case is not- You know, people in this office don't know about it- |
| UM: | Super- |

WS: Except my boss-

UM: Okay, super-

WS: I mean, so that's why we-

UM: Who, who's your boss?

WS: WELDON KENNEDY.

UM: Okay, now he, you're, you're sure, you're positive for sure that every, that's okay?

WS: Yes.

UM: I'd better be.

WS: Okay.

UM: I know you better be.

WS: I mean, gees, ah-

UM: Because both of us may have a problem if you're wrong.

WS: Yeah, well this, you're, you're right. I mean ah-

UM: If it was, if it wasn't the big one who involved in this thing, it wouldn't bother me a bit.

WS: Yeah.

UM: But we're talking 'bout somebody that's heavy.

WS: Yeah, okay, I know it. I realize. Okay, listen, another thing- I, 'cause I've been- In anticipation of your call, I've been written, got some questions here. When you told me that this whole deal was planned back in either January or February of 1981-

UM: It was put together in February of eighty-one.

WS: February of eighty-one-

UM: Uh-huh-

WS: In, in FAIRCHILD'S office?

UM: Okay, INGRAM came out, and- Okay, the way I have it is INGRAM came- Well, probably the best way to do it is just to put you in touch with the person that explained it to me.

WS: Okay, that, that would be great.

UM: You say RICHTER is gonna be in Jackson tonight?

WS: RICHTER is coming in tonight.

UM: Where are you gonna be tomorrow?

WS: I'll be right here tomorrow.

UM: Okay, any chance for-

WS: I'm staying at the Holiday Inn Downtown tonight, and I'm in Room 722.

UM: Okay.

WS: At the Holiday Inn Downtown. Now RICHTER is gonna be there too, but his plane doesn't get in from Washington till late.

UM: All right, just a minute. Let me write this down. What about in the morning?

WS: Okay, in the morning, first thing, we're coming back over here to the office.

UM: Okay, I gotta, I'm gonna make a note.

WS: And you're welcome to join us.

UM: Seven, twenty-two?

WS: Yeah.

UM: Okay.

WS: That's tonight now. And I mean, I'll be, I'll be in my room outside of, you know, when I'm out gettin' something to eat.

UM: Okay, tomorrow morning would be better for me. I've got one or two customers I've got to see this afternoon-

WS: Okay-

UM: Before I leave here-

WS: Okay.

UM: Ah, I may just go ahead and come to Jackson in the morning. Ah, you, RICHTER knows that everything is quiet, totally quiet?

WS: RICHTER knows that everything- He, he knows everything. Everything is totally quiet. Now everything has been explained to him. That's why my boss and I went to Washington on January 16, and we sat down with him and explained everything to him, and he's coming down here. Now, now there's a lot more to it than what you and I know.

UM: I know that.

WS: Ah-

UM: Listen, one other question that's bothering me. You know that first day when I called up there and talked to the, to the man that was formerly in your office?

WS: Yeah, well, he was over in the Mobile- He is a former agent of the Mobile office.

UM: Okay, I didn't let any cats out of the bag there, did I?

WS: No, uh-uh-

UM: Okay-

WS: I don't know why, 'cause he never wrote anything up. He just called me.

UM: Okay, okay.

WS: That's all.

UM: 'Cause I originally contacted the Washington Office, and I thought well gosh, if he went back and-

WS: Yeah, no, no- All, all it was, you called me, and then, you know, when you said you'd called ah, what the heck, was that TERRY ROSS, I think?

UM: Yeah, TERRY ROSS.

WS: Yeah, TERRY ROSS. Then I called him back up, and I said you know, hey TERRY, you know, I talked with him, and he told me how that transpired. There's no problem there at all.

UM: Okay, super-

WS: None whatsoever.

UM: What if I just see if I can't get in touch with you tomorrow, and you, you get RICHTER, and y'all just wonder away from the office for a little bit.

WS: We can handle that.

UM: Okay.

WS: We can handle that ah without any problem. Do it- Now I don't know when his ah, ah plane goes back to Washington. Ah, I'm just- It'll be some time tomorrow, probably tomorrow afternoon, late.

UM: Okay.

WS: So try to make it in the morning if you can.

UM: It'll have to be in the morning for me, or, or I'm gonna throw my whole schedule off.

WS: Okay. Okay.

UM: Okay, I-

WS: That'll be super.

UM: I will not bring everything that I've got. I'll bring Xeroxes.

WS: Okay, okay.

UM: So ah, so- And I'm trying to figure out some way of gettin' you that other stuff tonight. You ask no questions, right?

WS: I'm not asking any questions.

UM: Okay.

WS: I'm not gonna ask any questions. And call me, and I tell you, we can walk away from the office, and, and if need be, we could meet back in the motel, you know, over in my room, 'cause that's just two blocks away.

UM: Okay.

WS: And that would be private.

UM: Okay, I'm familiar with the, with downtown Jackson.

WS: Okay, you know where the Federal Building is.

UM: Yeah, uh-huh-

WS: Okay, well-

UM: On Farish Street-

WS: Our office is on the fifteenth floor, the very top floor.

UM: Okay, I probably won't go there-

WS: Yeah-

UM: I'll probably just call you and tell you, tell you where I am.

WS: Okay.

UM: Ah, no particular time in the morning. Ah, you're sure he'll be in there though.

WS: He'll be here, unless, unless he gets delayed, doesn't come in, you know, tonight.

UM: Okay, well-

WS: Or something, but he's coming tonight. That's why I'm up here in Jackson to meet him.

UM: Okay, well, what else do I need to do between now and then?

WS: Ah, my gosh, I can't think of anything, ah- Okay, but going back to this meeting now. I want you to be thinking this here. Ah, what we need to find out, what we've got to pin down- We can, we're not gonna have any problem proving that the judge received royalty payments. Ah, incidentally he's not receiving any directly from Getty.

UM: Oh, he's not?

WS: No, ah-

UM: When did they change that, 'cause it was originally set up, from what I understand-

WS: Well, that's what they wanted to do, but ah- You, you remember you told me about there was a ah, a problem or something that was alluded to in one of the letters.

UM: Oh, yeah-

WS: Okay, well that problem was that ah FAIRCHILD- That royalty ah portion was in his name as an individual. It was not in the name of the construction company.

UM: Right.

WS: And what he was trying to do, the, the royalty deed override was from the construction company to the judge. Well, that was not legal because the construction company had no interest in that well. This was the one in Marion County.

UM: Okay.

WS: So that was a discrepancy, and, and we know for a fact that the judge never got a royalty. So obviously what happened is, is they just wrote the checks out of FAIRCHILD'S office.

UM: Okay, now-

WS: You-

UM: No, that, that means that two of the checks will be coming out of FAIRCHILD, the construction company account, and one will be coming out of, out of FAIRCHILD'S personal account 'cause the ROSS was, was one directly from him.

WS: Okay, now listen. I don't know about Union, I don't know whether ah Union was sending royalty checks to the judge. We haven't checked that far yet.

UM: No, no-

WS: They're not-

UM: No, no-

WS: Okay, how 'bout the Exxon one now?

UM: Ah, no, that's coming out of FAIRCHILD'S office-

WS: Okay, so they're doing all of 'em out of his office.

UM: From what I understand, there's a file in BILLY RILEY'S office that has all those payments and all set out in a, in an accounting on that well.

WS: Okay.

UM: All that stuff is in there office though. How in the world are we gonna get in there and get it.

WS: Well, don't- You're, you know that the- You know, these are things that we can get with a search warrant or and/or a subpoena, but these are things that we've got to ah, you know, we don't- That's why we don't wanna talk to the wrong person at the wrong time. You know, we wanna talk to people who are gonna be cooperative and then we can get the subpoenas and the search warrant, and we can go right there and pick up what we want.

UM: Okay, well how, because of, you know, when we talked last time, we talked about Judge COX having this particular case.

WS: Yeah.

UM: Can you put anything with that?

WS: Okay, that, we're trying- Okay, this is the, the time frame. Okay, Judge COX- The, the arrest took place August 4th, 1980.

UM: Uh-huh.

WS: Ah, FAIRCHILD was not an arrested at that time, I don't think. I think his arrest came two or three weeks later, I believe-

UM: Right.

WS: I'm not real sure. Okay-

UM: Right.

WS: Two of the guys were an, they appeared in Judge COX'S court. They pled guilty. They were both fined and received five year jail sentences. Okay?

UM: Right.

WS: Okay, then we know that in November of 1980- Just as- August, September, October- three months later ah BILL PORTER and DREW FAIRCHILD go to the U. S. Attorney's office in Jackson, and they arrive at what is known as a memorandum of understanding, which, in effect, is ah kind of a plea agreement. And that is signed. Okay?

UM: Right.

WS: Okay, then at some- This is another thing that we've got to try to explore- At some point in the not too distant ah future, after that November meeting in the U. S. Attorney's office, that, the U. S. Attorney turned the entire case over to BUD HOLMES.

UM: Right. Keep talking-

WS: And then it was, then I think the next date we have is something like August of 1981 when ah it goes to the grand- We can document that part, but what, what we're trying to find out, and what we can't find out right now is what prompted the U. S. Attorney to suddenly turn this matter over to BUD HOLMES when the U. S. Attorney appeared to have the whole case wrapped up. That's, see that's a question in my mind. You know, I mean he had the whole case wrapped up, because number one he had- Two of the guys had already pled guilty and been sentenced in federal court before Judge COX. The third guy, FAIRCHILD, had already signed a plea agreement with the U. S. Attorney's office, and he agreed to testify, I think, against ah watkins or somethin', so then it gets back down to ah, ah- For some reason or other, the U. S. Attorney decided that he didn't wanna proceed with it. He wanted to send it back. Now that

UM: Now do you understand-

WS: Is that what the judge did?

UM: Now do you understand why my, wh
of a sudden my ears perked up, a
started-

WS: Sure-

UM: Puttin' two and two together?

WS: But see, these are things that w
got to- Now, that's why it's imp
for us to go back to that origin
meeting in January- When you sa
January or February 1981-

UM: MARGARET BUCKLEY was the one wh
put INGRAM, NIXON and FAIRCHILD
together in, in FAIRCHILD'S off

WS: You, and, and you think she mig
with us.

UM: She might.

WS: Okay.

UM: I don't think she would go to
may, she may clam up on you.

WS: She still works there though.

UM: Yes.

WS: Okay, but she can- I wonder if
present during that meeting.

UM: No, but her office is right o
office.

WS: And it's possible that she-

UM: Right-

WS: Coulda overheard something-

UM: Uh-huh-

WS: Okay, and I wonder if they're, I won
if they take any kind of minutes or
anything, probably not-

UM: Are you kidding?

WS: Well, you never know. Some of thes
people are so doggone, you know,
legalized that they just might make
little notation of what transpired.

UM: No, but ah, from what I understand,
when the instrument came up, ah, IN
was present when the, when the inf
went down as to what to draw up on
assignments.

WS: Yeah.

UM: And then, you know, they were deli
they were sent back, said no, we c
'em, we gotta backdate 'em.

WS: Okay.

UM: Because it's, you know, and then,
the instruments were all backdate

WS: Okay.

UM: But see, see, the notarized- You
you question the notary. The not
the original date-

WS: Yeah.

UM: By, by LYNN SMITH.

WS: Uh-huh.

UM: And then, then they're backdated and notarized in the backdate by LYNN SMITH.

WS: Yeah, well, see she's right. She is gonna be right in there. I mean, she's gonna have to be able to answer why they backdated those things.

UM: Uh-huh. Well, the thing, the key to show which one is proper is when you put it, when you bring out the original one-

WS: Uh-huh-

UM: And you look at it, and you see that it's got a witness of a lady-

WS: Uh-huh-

UM: Who didn't start working there till January of eighty-one.

WS: On the original one.

UM: Right.

WS: Yeah, boy that's interesting-

UM: Right-

WS: Okay, yeah-

UM: So see that, that right there-

WS: That-

UM: With the notarized- See, FAIRCHILD

WS: Yeah-

UM: Signed it and witnessed, the whole nine yards-

WS: Yeah-

UM: And you put it in there-

WS: And then she knows-

UM: And then it's backdated, and the one that you, that you have a copy of sudden, you know, is, is the one-

WS: That, that's, yeah, that's the one that's a remake of it.

UM: Right.

WS: Okay. Now who, who was the lady that signed that one?

UM: Her name was SHERRY BURNETT.

WS: Would she talk to us?

UM: She may, she may-

WS: Where is she now?

UM: Last I heard of her, she- Well, let me see, she's from Waynesboro.

WS: Uh-huh-

UM: She, her husband's name is DAVID BURNETT.

WS: Uh-huh.

UM: Now last I heard, they had gone to South Louisiana, and he's working as some kind of a securities broker for ah some, some outfit out of New Orleans.

WS: Uh-huh, okay.

UM: Wait a minute, First Jersey Securities is who he was working for.

WS: Okay-

UM: So-

WS: Okay-

UM: You, you might be able to use that to track her down.

WS: Okay.

UM: But she went to work, from what I understand, January of eighty-one.

WS: Okay.

UM: And then this thing was done in, in February of eighty-one.

WS: Yeah.

UM: So actually what you gotta do is just show, you know, just get her to say where she went to work, or when she went to work-

WS: Exactly-

UM: And for sure she couldn't have-

WS: Couldn't possibly, yeah-

UM: They couldn't have been done in eighty-

WS: But, 'course we need that original document-

UM: Right-

WS: To make any sense out of that.

UM: Right.

WS: All right, sir.

UM: Let me see what I can do on that, and, okay, anything else?

WS: Ah, no, you got my head swimming right now. Let me see here. Who was president- Okay, we got that. Let's see here. Exact location of pertinent documents. You know, we need to know that, you know-

UM: Okay, everything like that or, or that, the files are set up ah by well.

WS: Uh-huh-

UM: So you're gonna have ah, like you're gonna have an L. D. ROSS file. You're gonna have a, ah-

WS: Okay-

UM: Ah, ROGERS-

WS: Okay.

UM: Well file, like so-

WS: Okay, how, okay, how 'bout in ah, ah CAROL INGRAM'S office. Is there anybody over there that, that we could talk to?

UM: I had one, but he's clammed up on me. I, you know, I-

WS: Well-

UM: I don't know if I was prying a little bit too much. 'Cause see, this thing came up just before Christmas where the, the price went up-

WS: Uh-huh-

UM: And that, that's when HOLMES came in like calvary to explain it to him why he best not do that.

WS: Yeah, okay-

UM: So ah, my boy might have, might have put two and two together and said, you know, he may have kinda gotten wise to me.

WS: Okay.

UM: Asking some questions.

WS: Okay. Look here. What time are you gonna call me tomorrow morning?

UM: What time you want me to call you in the morning?

WS: Well, I mean, ah you call me any time.

UM: Well, I, I figured what I'd do is just wait till after I got to town.

WS: Okay.

UM: And, 'cause, you know, I won't be in Jackson tonight.

WS: Okay.

UM: And I'll just, I'll just run on over there in the morning.

WS: Okay, that'll be fine. Just call me right here at this number.

UM: Okay. Is there anything else now? I wanna try and make sure I've got all-

WS: All I've got-

UM: The whole nine yards put together.

WS: Okay, the main thing is, boy, I, I tell you, don't, you know, call me tomorrow even if you get waylaid somewhere and you're not gonna make it over. Call me and say hey, I can't make it or something, and, you know, and you and I are gonna have to work out some kind of a deal where ah, you know, I know you're gonna call me come hell or high water-

(Interruption- End of Side A of tape recording).

-Know-

UM: Because once he, once he get, you know, once the trial's put on, the testimony is there, it's time to sentence.

WS: Exactly right-

UM: They, they've already got-

WS: But see, but the interesting is they've got enough on FAIRCHILD that they could sentence him anyways. They can go ahead. They don't-

UM: But they won't-

WS: Have to wait till he testifies against-

UM: But they won't do that. That's the excuse-

WS: I know it. That's the excuse. I agree with you-

UM: They already tried to pass the case to the files.

WS: Yeah-

UM: And DICKEY-

WS: I, I know-

UM: DICKEY McKENZIE made that comment in front of that, in front of that reporter that just perked up on it and took off and ran with it and got him-

WS: Right-

UM: To reschedule it.

WS: Okay. I-

UM: See, they've already tried it one time.

WS: Yeah, I know it. I know it. We're, we're staying on top of that business.

UM: Okay.

WS: Ah-

UM: I'll just-

WS: Okay, you try, you gonna try to get some paper work on that third well for me. I mean if you can't, if you can't, no problem, we'll look it up because my guess is that the darn thing is dated in ah, is dated the same way, you know, February, eighty, or, and, and ah it's gonna be filed on or about April-.

UM: All, all-

WS: Sixth, eighty-one-

UM: All three were done the same time.

WS: They were, they had to be.

UM: See, INGRAM, In- All the instruments were delivered to INGRAM.

WS: Uh-huh.

UM: INGRAM handled the whole, you know, the whole setting up for the judge.

WS: Yeah.

UM: There are notes in the file, from what I understand, where INGRAM called over there wanting them to get judge in a pay status.

WS: Yeah, yeah, okay. Well, you know, it looks like he, he got ah, oh, probably ah from each well, you know, twenty thousand a year or something.

UM: No, the first payment on the Wilkie was close, was 'bout nine thousand dollars.

WS: Okay, okay, well. See, we, you know, we got a long way to go, but we, you know, we've covered a lot of ground, and, you know, the sooner we can talk to people, the better off we're gonna be.

UM: Okay. Well, let me- I've got to figure out tonight some way of getting that stuff out of that office. out of those well files.

WS: Well, don't, I don't know where it's coming from, so just ah, you know, however, you know, whatever you're getting, you know, don't do anything that, that would not be-

UM: Well-

WS: Illegal, 'cause we can-

UM: Well if-

WS: We could do it legally later.

UM: If an employee hands it to me, that's not illegal is it?

WS: No, I guess not.

UM: Okay, I didn't think so-

WS: I mean ah-

UM: Got to go and sweet-talk some employees.

WS: Okay, well, you know, if you, if you have, but you know when you sweet-talk somebody and they're turning that stuff over, ah, see if you can't sweet-talk ah somebody into talking to us.

UM: Okay. Okay, so you're just gonna-
All right, now how busy is your schedule tomorrow?

WS: I, I'm gonna be with RICHTER all day long.

UM: What, is he still-

WS: Until he leaves-

UM: Did he come down here for something else, or, did he-

WS: No.

UM: This is it.

WS: This, this, this is it. Okay, but as I say, this is a percentage of an overall picture.

UM: Okay.

WS: Okay?

UM: Super-

WS: And, and he's down here, he's coming down here with two other attorneys from his section up there.

UM: Okay.

WS: And ah, they're all working on different aspects of this thing, but, you know, it's more than, you know, for- It's things that you and I don't even, won't even know about.

UM: Oh, I, I-

WS: But it's all-

UM: I have suspicions that the population of South Mississippi will probably drop drastically.

WS: Well, that's- So anyways, ah, ah, that's, that's why it's terrific that you called. I mean, God, I, you know, I wouldn't ah- It's great that you called-

UM: Well, well, when that thing happened back in November, I got scared.

WS: Okay, that explains, okay-

UM: And, and so I'll just see you some time in the morning and ah-

WS: Call me here, let me know where you are, and you know my room number, 722, and-

UM: Okay, I may not wanna go there. I may wanna go some place where we can sit down and have a cup of coffee and just kinda bat everything around.

WS: Okay, but the problem with that is it's hard to do in a restaurant with people around. We'll do it. Doesn't make any difference.

UM: We'll cross that bridge when we come to it. We may just meet-

WS: Fine-

UM: Just meet in the restaurant at Holiday Inn.

WS: Good, whatever-

UM: Make it, make it a Big Mac at McDonald's right next door to you.

WS: Okay.

UM: Okay, but I'll see you some time in the morning then.

WS: Good enough.

UM: Okay, thank you a lot-

WS: Okay, thank you a lot-

UM: Bye now-

WS: Bye.

# EXHIBIT N - 8

FD-302 (REV. 3-8-77)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 4/11/84

WILEY FAIRCHILD, owner, W. R. FAIRCHILD CONSTRUCTION COMPANY, Highway 49 North, Hattiesburg, Mississippi, was interviewed in his offices. He was advised of the identities of the interviewing Agents and further that a friend of FAIRCHILD's, JOHN BALTER, had reported that FAIRCHILD had information indicating he was being extorted or blackmailed by unidentified persons.

FAIRCHILD advised JOHN BALTER is a long-time friend who is currently doing lobbying work for FAIRCHILD in the MISSISSIPPI STATE LEGISLATURE. He stated about five years ago his son, DREW FAIRCHILD, was arrested on a narcotics charge involving an airplane which flew in to the Hattiesburg airport loaded with approximately 1,900 pounds of marijuana. FAIRCHILD commented that while his son had been arrested in connection with that airplane, his son actually could not have been guilty because he was home asleep in bed at the time the airplane flew in to the Hattiesburg airport.

Following the arrest of DREW FAIRCHILD, WILEY FAIRCHILD went to his long-time friend, "BUD" HOLMES, then Forrest County District Attorney, and asked for his advice. HOLMES suggested to WILEY FAIRCHILD that he should hire either WILLIAM F. PORTER or CARROLL INGRAM, both Hattiesburg attorneys. According to FAIRCHILD, HOLMES told him, "I think you'll be wanting PORTER." FAIRCHILD also implied that HOLMES, in addition, indicated there were other reasons why he should hire PORTER to defend his son; however, FAIRCHILD refused to divulge to interviewing Agents what these other reasons were.

Attorney WILLIAM F. PORTER was hired, and WILEY FAIRCHILD paid him a $2,500 fee to represent his son. Shortly thereafter, Attorney PORTER and DREW FAIRCHILD met in the Jackson, Mississippi, offices of U. S. Attorney GEORGE PHILLIPS, at which time a Memorandum of Understanding was drawn up wherein DREW FAIRCHILD agreed to enter a guilty plea to a charge brought against him in the narcotics case in exchange for his providing information of value to law enforcement authorities regarding narcotics matters. WILEY FAIRCHILD commented that following this meeting, Attorney PORTER folded up his copy of the agreement and put it in his coat pocket. In addition, at this point, DREW FAIRCHILD told U. S. Attorney PHILLIPS that when PHILLIPS wants to question him about knowledge of narcotics activities that PHILLIPS should be sure that he (DREW FAIRCHILD) is given a polygraph examination and truth serum because

Investigation on 4/10/84 at Hattiesburg, Mississippi File # JN 58B-109

by SA K. P. WHITE-SPUNNER, JR.
SA DONALD M. LAWLESS/KWS/mae Date dictated 4/10/84

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he really will surprise PHILLIPS at his lack of such knowledge.

FAIRCHILD related that at some point later on, his son DREW was indicted by a grand jury in Forrest County, after which Attorney PORTER told WILEY FAIRCHILD that he wanted $7,500 more to take complete care of his son DREW's case. According to WILEY FAIRCHILD, Attorney PORTER indicated to him that for this additional sum, everything would be taken care of, and DREW FAIRCHILD would not receive a jail sentence.

Following this occurrence, on an unknown date, DREW FAIRCHILD, with attorney PORTER, and District Attorney HOLMES, appeared in Forrest County Circuit Court, at which time District Attorney HOLMES gave DREW FAIRCHILD "two minutes" to enter his guilty plea, which FAIRCHILD did on the recommendation of Attorney PORTER.

Within approximately two days of District Attorney BUD HOLMES' leaving office in late December of 1983, HOLMES contacted DREW FAIRCHILD and told him they needed to get together to take care of an agreement apparently reached between District Attorney HOLMES and Attorney WILLIAM PORTER (now deceased), which allegedly called for five years suspended, unsupervised probation and possibly a fine. DREW FAIRCHILD's reaction to Attorney HOLMES was that he knew nothing of such an agreement, and he refused to go along. DREW FAIRCHILD then came to WILEY FAIRCHILD, telling him what had happened, and WILEY FAIRCHILD contacted Attorney CARROLL INGRAM, telling him that he was tired of the case going on so long, and he had paid enough to Attorney PORTER, and if there were any more demands made upon him, he would go to local newsman MARVIN RUBIN and tell him the whole story. Shortly thereafter, District Attorney HOLMES and local attorney DICKY MC KENZIE, who was at that time Forrest County Circuit Judge elect, showed up in FAIRCHILD's office, during which meeting HOLMES told FAIRCHILD there was no need for him to go to the press, that he should let the matter slide on.

FAIRCHILD also related that during the above period of time, an unidentified friend of his was told by Attorney WILLIAM PORTER that if DREW FAIRCHILD would "get off of his money," he, PORTER, could get his case handled satisfactorily. The friend (who FAIRCHILD refused to identify to interviewing Agents) told Attorney PORTER that DREW FAIRCHILD did not have any money but WILEY FAIRCHILD does, whereupon Attorney PORTER allegedly dispatched this unidentified friend to WILEY FAIRCHILD with the same message.

Continuation of interview of WILEY FAIRCHILD Page 3

FAIRCHILD has steadfastly stated he refused to pay any additional funds to BUD HOLMES or any other party in this investigation; however, he implied there are continued pressures on him to do so. He commented that his friend, JOHN BALTER, is supposed to approach the Governor of the State of Mississippi (BILL ALLAIN) and inquire whether ALLAIN would pardon DREW FAIRCHILD if and when he is sentenced in state court in Hattiesburg, Mississippi.

In addition, FAIRCHILD commented he has spoken to other persons described by him only as "some of the finest people in the State of Mississippi" on behalf of his son, DREW FAIRCHILD, but he refused to identify these persons to interviewing Agents at this time.

FAIRCHILD also stated that admittedly he is not now divulging all the information he knows of regarding this case or his allegations of blackmail or extortion to interviewing Agents at this time since he wants to discuss the matter with his son, DREW FAIRCHILD, prior to doing so. He indicated the visit of interviewing Agents was not planned and was entirely unexpected on his part.

FAIRCHILD was advised by interviewing Agents that the information he did provide, coupled with the information which he indicated he has but does not now wish to provide, gives the Agents no choice but to enter a full investigation of his allegations at this time. FAIRCHILD replied that he will talk to interviewing Agents again on April 11, 1984.

At the conclusion of the interview, FAIRCHILD furnished from his files a copy of a Memorandum of Understanding dated November 19, 1980, regarding his son DREW's meeting in U. S. Attorney GEORGE PHILLIPS' office. He also provided a photocopy of a "To Whom It May Concern" note dated June 20, 1983, signed by R. A. FAIRCHILD, without further explanation.

EXHIBIT N - 9

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 4/17/84

WILEY FAIRCHILD, owner, W. R. FAIRCHILD CONSTRUCTION COMPANY, Hattiesburg, Mississippi, was interviewed in his offices.

FAIRCHILD was advised by interviewing Agents that following their interview of him on April 10, 1984, certain investigation was conducted to obtain facts regarding the background of the August 4, 1980, narcotics arrests in Hattiesburg, Mississippi, in which FAIRCHILD's son, DREW FAIRCHILD, was involved. FAIRCHILD was advised that FBI investigation had left unanswered one or more crucial questions, specifically as to why the Office of the United States Attorney had turned over the prosecution of DREW FAIRCHILD and subject WATKINS in the narcotics case to Forrest County District Attorney BUD HOLMES when the U. S. Attorney's Office appeared to have mainly handled the entire case satisfactorily through the Federal Court system.

FAIRCHILD was advised that this point alone strongly implied that some pressure or other influence had been applied on unidentified parties in the Federal sector to turn the case over to local authorities.

FAIRCHILD was further advised that an examination of Forrest County court records regarding the case against DREW FAIRCHILD determined that even though he was indicted by a county grand jury in August of 1981 and subsequently entered a guilty plea before then Circuit Judge JACK WELDIE, the District Attorney (BUD HOLMES) had subsequently filed a motion to have the case passed to the files, which motion was granted by Judge WELDIE in December of 1981. It was pointed out to FAIRCHILD that the obvious inaction by Forrest County authorities in the case against DREW FAIRCHILD also raised questions in this matter, all of which tend to support FAIRCHILD's previously-made remarks that he has been blackmailed and extorted by unnamed individuals as a result of the handling of the case against DREW FAIRCHILD.

FAIRCHILD immediately responded he knows why the case against his son was passed to the files by Judge WELDIE. When pressed for an answer by interviewing Agents, FAIRCHILD responded, "I threatened them." When pressed to explain this remark, FAIRCHILD stated that he did not threaten anyone "physically, nothing like that," but that he had contacted District Attorney HOLMES and Judge WELDIE and had told them if they did not take care of the case quickly and pass it to the files, he would never ever financially

Investigation on 4/11/84 at Hattiesburg, Mississippi File # JN 58B-109

SA K. P. WHITE-SPUNNER, JR.
by SA DONALD M. LAWLESS/KWS/mae Date dictated 4/13/84

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Continuation of interview of WILEY FAIRCHILD Page 2

or otherwise support them or anyone they supported in any political endeavor in the future.

(During this and the April 10, 1984, interview, FAIRCHILD exhibited a propensity to boast about his money and power and his willingness and apparent ability to influence high public officials using his power. At one point, he searched through a desk drawer and took out a slip of paper and told interviewing Agents that both he and his brother, RODNEY FAIRCHILD, had supported the unsuccessful effort to run for governor of EVELYN GANDY to the tune of over $300,000.)

FAIRCHILD was advised by interviewing Agent that based on the information he has already provided plus his remarks that he would furnish additional pertinent information at some future date regarding his allegations of bribery and extortion, the FBI had no choice but to commence a "full field investigation" at this time which would include interviews of anyone and everyone deemed necessary by the FBI. FAIRCHILD was advised that inasmuch as he had indirectly brought the FBI into this matter that his assistance is being solicited. FAIRCHILD remarked that he understands and would reveal to interviewing Agents at some later date additional information he has.

FAIRCHILD advised that he is leaving the following day on a vacation and would return to his offices in Hattiesburg in approximately one week.

EXHIBIT N - 10

FD-302 (REV. 3-8-77)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 4/19/84

WILEY FAIRCHILD, owner, W. R. FAIRCHILD CONSTRUCTION COMPANY, was reinterviewed in his offices.

FAIRCHILD was advised by interviewing Agents that during the past several days in FAIRCHILD's absence from Hattiesburg, the FBI had been continuously investigating this matter and had caused financial disclosure documents submitted by various individuals in the Federal judicial sector, including the three Federal judges in the Southern District of Mississippi and the U. S. Attorney, to be reviewed. This review had developed documentation of a connection between Federal Judge WALTER L. NIXON, JR., and FAIRCHILD. FAIRCHILD's comments concerning this connection were solicited.

(When FAIRCHILD was advised of the foregoing, he became visibly upset; however, he grew momentarily silent before contacting his bookkeeper, Mrs. MARGARET BUCKLEY, requesting that she obtain certain unspecified documents.)

Mrs. MARGARET BUCKLEY brought in to the room a manilla folder which FAIRCHILD instructed her to display to interviewing Agents. This folder bore a file tab notation identifying it as relating to certain business with WALTER NIXON and the folder contained photocopies of three promissory notes, all dated February 25, 1980, a number of photocopies of checks apparently written by NIXON to W. R. FAIRCHILD CONSTRUCTION COMPANY apparently in payment on the promissory notes. In addition, there were two pink telephone call slips addressed to "SKIP" from BETTY LOU CLARK, all dated in 1982, and a double-spaced, one-page typed note from BETTY LOU CLARK to SKIP thanking him for some help in preparing interest payments.

While examining the file, Mrs. BUCKLEY also produced a ledger-type sheet which she indicated is a record of royalty payments to the FAIRCHILD company on the L. D. ROSS well in Covington County, Mississippi.

During this time, FAIRCHILD made a remark indicating he was not happy that the FBI was involved now in this investigation, whereupon interviewing Agent WHITE-SPUNNER pointed out to him in front of Mrs. BUCKLEY that, "After all, Mr. FAIRCHILD, it was you that had the U. S. Attorney contacted" regarding possible bribery and extortion relating to this matter. Immediately after Mrs. BUCKLEY left the room, FAIRCHILD, in a lower voice, told interviewing Agents that he does not want it revealed that he is responsible for contacting the U. S. Attorney.

Investigation on 4/18/84 at Hattiesburg, Mississippi File # JN 58B-109

by SA K. P. WHITE-SPUNNER, JR.
SA DONALD M. LAWLESS/KWS/mae Date dictated 4/18/84

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Continuation of interview of WILEY FAIRCHILD . Page 2

Interviewing Agents asked FAIRCHILD if he would object to furnishing copies of the documents displayed by him in the NIXON folder, at which time he remarked he was now sorry he had given Agents copies of documents during his previous interview, and prior to giving copies of any future documents he would like to talk to someone else. When pressed who this someone else would be he stated, "Wallace Gunn" (local attorney). FAIRCHILD then stated he may even go ahead and furnish copies of the documents no matter what Mr. GUNN advises him to do. He stated Mr. GUNN is home sick with the flu at the present time.

FAIRCHILD further identified the three wells involved as being gas wells located in Mobile County, Alabama; Covington County, Mississippi; and Marion County, Mississippi.

He again identified R. L. JARVIS as being the former employee who handled the NIXON transactions, and he is no longer employed by FAIRCHILD CONSTRUCTION COMPANY but is in Hattiesburg somewhere.

EXHIBIT N - 11

FD-302 (REV. 3-8-77)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/4/84

WILEY FAIRCHILD, who is aware of the identity of SA DONALD M. LAWLESS, was contacted at his place of business, FAIRCHILD CONSTRUCTION COMPANY, at which time he was made aware of the identity of WELDON L. KENNEDY, Special Agent in Charge, and BOB RICHTER, Attorney, United States Department of Justice, Public Integrity Section. FAIRCHILD thereafter furnished the following information:

FAIRCHILD essentially reiterated information he had previously furnished to SA LAWLESS and SA K. P. WHITE-SPUNNER, JR., on previous interviews with FAIRCHILD. In addition to this information, however, FAIRCHILD advised he had never paid any monies to BUD HOLMES, the district attorney in Forrest County, Mississippi, for the handling of the criminal case against his son, DREW FAIRCHILD.

FAIRCHILD admitted he had personally met with WALTER L. NIXON, Chief Judge, United States District Court, Southern District of Mississippi, in his office on two occasions, one of which involved discussions of the details of an oil and gas royalty transaction between him and NIXON. FAIRCHILD admitted one of these meetings between him and NIXON occurred at a time after his son, DREW FAIRCHILD, had become involved in a criminal matter, but denied the meeting between him and NIXON had anything to do with his son's criminal matter. FAIRCHILD advised he (FAIRCHILD) had been the one who set the price of the oil and gas royalties he had sold to NIXON.

FAIRCHILD advised the possibility of selling oil or gas royalties to NIXON was discussed long before his son, DREW FAIRCHILD, had become involved in a planeload of marijuana that landed in Hattiesburg. FAIRCHILD advised CARROLL INGRAM had asked him to put NIXON in a deal, doing so in approximately 1979. FAIRCHILD recalled INGRAM asked him to put NIXON in a deal if one came along.

FAIRCHILD was questioned as to whether his transaction with Judge NIXON was a normal business transaction, to which FAIRCHILD replied that it was. FAIRCHILD was further questioned as to whether he frequently placed various individuals into similar-type business transactions with himself, to which he replied he put Judge NIXON in the aforementioned deal the same as he would THAD COCHRAN or former Mississippi Governor BILL WALLER,

Investigation on 4/19/84 at Hattiesburg, Mississippi File # JN 58B-109

by SAC WELDON L. KENNEDY
SA DONALD M. LAWLESS/DML/mae Date dictated 4/26/84

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency;
it and its contents are not to be distributed outside your agency.

Continuation of interview of WILEY FAIRCHILD Page 2

FAIRCHILD was questioned as to whether he would furnish similar deals to his employees or to less notable individuals, to which he replied he would not. When pressed to explain the discrepancy, FAIRCHILD advised Judge NIXON as well as former Governor BILL WALLER were influential men, and he put Judge NIXON in the deal as described above because CARROLL INGRAM asked him to. FAIRCHILD advised, "I've got a good friend in CARROLL INGRAM."

When asked to describe what FAIRCHILD defined as an influential man as it relates to Judge NIXON, FAIRCHILD advised NIXON as a federal judge had the discretion to levy either a $500,000 fine or a $250,000 fine.

FAIRCHILD repeatedly denied his business transaction with Judge NIXON was an attempt on his part to influence or to seek Judge NIXON's influence on behalf of his son, DREW FAIRCHILD, further stating the thought had never crossed his mind when he entered the transaction with Judge NIXON.

When questioned as to the authenticity of the dates appearing on the conveyances in the above-described transaction between FAIRCHILD and NIXON, FAIRCHILD advised he now recalled CARROLL INGRAM, who had prepared the conveyances, had instructed that the conveyances should be backdated. FAIRCHILD advised he did not have this recollection when discussing these conveyances with SA's LAWLESS and WHITE-SPUNNER and could remember no more than what he furnished to the interviewing Agents at this time.

FAIRCHILD, when asked to furnish a waiver of attorney/client privilege to the interviewing Agents for the purpose of presenting to and subsequently interviewing CARROLL INGRAM, advised he would first have to consult with his attorney, WALLACE GUNN, prior to furnishing such a waiver.

EXHIBIT N - 12

CRIMINAL DOCKET - U.S. District Court

PETTY OFFENSE ☐ MISDEMEANOR ☐ FELONY ☒

JUDGE MAGISTRATE Assigned: X

Dist. 538 | Office 4

3803 Stat./Sentence

U.S. vs. L A/S, Billy Ray M.D.

(LAST, FIRST, MIDDLE)

JUVENILE ☐

Case Filed Mo. Day: 11 1

No. of Defts: 1

E76-13 | 1

Yr. | Docket No. | Def.

U.S. MAG. CASE NO ▶

| U.S. TITLE/SECTION | OFFENSES CHARGED | ORIGINAL COUNTS |
|---|---|---|
| 1 USC 841(a)<br>(1) | Distribution of Controlled Substances | 7 |

SUPERSEDING COUNTS

BAIL • RELEASE

☐ Denied

AMT. Set: $10,000

☐ Fugitive

☒ Pers. Recog.

☐ PSA

Date

CONDITIONS

☐ 10% Deposit

☐ Surety Bond

— Collateral

☐ 3rd Pty Cust.

☐ Other

☐ Bail Not Made

☐ Status Changed (See Docket)

II KEY DATES & INTERVALS

ARREST or U.S. Custody Began: 11-17-76

Summons Served:

First Appearance: 11-19-77

High Risk Date:

Indict. Waived ☐

In Charging District

INDICTMENT ☒ Information ☐: 11-11-76

Superseding ☐ Indict/Info ☐

ARRAIGNMENT: 11-19-77

1st Plea: 11-19-77

☒ NG ☐ G ☐ NOL

G. Plea W/Drawn

Final Plea:

☐ NG ☐ G ☐ NOL

Trial Set For:

TRIAL

Nor Dsrs ☒

Trial Began: 2-14-77

Trial Ended: 2-19-77

☐ J ☐ N ☐ J

Disposition of Charges: 2-19-77

☒ Convicted

☐ Acquitted

☐ Dismissed

☐ On Government's Motion

SENTENCE: 3-18-77

☒ On All Charges

☐ On Lesser Offense(s)

☐ WOP ☐ WP

MAGISTRATE

| | DATE | INITIAL/NO |
|---|---|---|
| Search Warrant Issued | | |
| Search Warrant Return | | |
| Summons Issued | | |
| Summons Served | | |
| Arrest Warrant Issued | | |
| COMPLAINT ▶ | | |
| OFFENSE (in Complaint) | | |

INITIAL APPEARANCE DATE ▶

PRELIMINARY EXAMINATION OR ☐ REMOVAL HEARING: Date Scheduled ▶ / Date Held ▶

☐ WAIVED ☐ NOT WAIVED

☐ INTERVENING INDICTMENT

Tape Number

INITIAL/NO

OUTCOME

☐ DISMISSED

☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT

☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst.

Robert E.Hauberg

ATTORNEYS Defense ☐ CJA ☐ Ret ☒ Waived ☐ Self ☐ None / Other ☐ PD ☐ CD

James McIntyre
1248 Capital Towers
Jackson,Miss. 39205

| DATE | DOCUMENT NO. / PROCEEDINGS |
|---|---|
| 11-11-76 | Indictment, filed. |
| 11-11-76 | Praecipe for warrant, filed. |
| 11-16-76 | Warrant issued, original and one copy, copy having attached cert. copy of Indictment, mailed to U.S.Marshal, Jackson,Miss. |
| 11-19-76 | Marshal's return on warrant executed 11-17-76, filed. |
| 11-22-76 | Arraignment before John R.Countiss, III in Jackson on 11-19-76 Defendant entered a plea of Not Guilty, defendant waived reading of indictment, filed. |
| 11-29-76 | Bond in the amount of $10,000 Billy R.Shows 104- Pinewood Drive Newton, Miss, 39345, filed. |
| 12-1-76 | Motion to Dismiss Indictment for Misjoinder of offenses, noticed for hearing on the 13th day of December,1976 at 9:00 a.m. Gulfpor Miss. |

EXCLUDABLE DELAY

| DATE | PROCEEDINGS (continued) PAGE 1 |
|---|---|
| 12-1-76 | Motion for Bill of Particulars, Noticed for hearing on the 3rd day of December,1976 at 9:00 a.m. in Jackson, Miss., filed. |
| 12-1-76 | Motion to Dismiss Indictment, Noticed for hearing on December 13,1976, at 9:00 a.m. in Gulfport,Miss. with cert. of serice filed. |
| 12-1-76 | Affidavit in support of motion to dismiss indictment with certificate of service,filed. |
| 12-1-76 | Motion to Dismiss indictment, noticed for hearing on December 13,1976, at 9:00 a.m. in Gulfport,Miss. with cert. of service,filed. |
| 12-6-76 | Notice of hearing of motions set for December 16, 1976, before Judge Russell at 9:oo a.m. in Vicksburg, Miss.,filed. |
| 12-27-76 | Notice of hearing on motion for Bill of particulars, on the 29th day of December,1976 at 9:00 a.m. in the Federal Building, Jackson,Miss.,with cert. of service,filed. |
| 1 30-76 | Order on motion for Bill of Particulars, filed and entered OB 1976 page 508.(Cert. copies mailed U.S. Atty). |
| 1-4-77 | Deputy Clerk's Sheet, Hearing on Motion for Bill of Particulars, 1 hour in Jackson, before Judge Countiss on 12-29-76, Action Taken: The Government immediately tendered to the defendant copies of the 7 prescriptions involved in the indictment in case E76-13(R), Relative to the indictment, the Gov. agreed to proceed only on the dispensing portion of §841 (a)(1) Title 21 USC. The Gov. agreed to give to the defendant the time of each of the seven acts alleged in the indictment on the case before the Court today. U.S. Attorney will furnish the deft. with any brady material if any. McIntyre is to draw an order treating this motion for bill of particulars as a motion for discovery under Rule 16. filed. |
| 1-7-77 | Electric Recording Magistrate Countiss, Envelope No. 35, filed, in Jackson, Miss. |

FINE AND RESTITUTION PAYMENTS

| DATE | RECEIPT NUMBER | C D NUMBER | DATE | RECEIPT NUMBER | C D NUMBER |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U.S. vs SHC , Billy Ray M.D.

E76-13

Yr. | Docket No. | D

V. EXCLUDABLE DELA

| DATE | PROCEEDINGS (continued) (Document No.) |
|---|---|
| 2-9-77 | Marshal's return on subpoena executed as to Wilmer O.Kiser 2-4-77, filed. |
| 2-11-77 | Marshal's return on subpoena executed as to Leon M. Williams, Manager of Williams' Drug, 2-9-77, filed. |
| 2-11-77 | Marshal's return on subpoena executed as to Oscar W. Adams, Manager of Upton Drugs, 2-9-77, filed. |
| 2-11-77 | Marshal's return on subpoena executed as to Ben A. Quintana Jr., Manager Rayner Drug, 2-8-77, filed. |
| 2-11-77 | Marshal's return on subpoena executed as to Wallace A. Vance, Manager of Tutor's Pharmacy, 2-8-77,filed. |
| 2-11-77 | Marshal's return on subpoena executed as to Raymond Bucker, Jr., Manager of Super-D Drug Store,Brookhaven Miss., 2-9-77, filed. |
| 2-14-77 | Marshal's return on subpoena executed as to Sanford Horton, 2-10-77, filed. |
| 2-14-77 | Marshal's return on subpoena executed as to George Stacey Manager of Thirfty Drug Store 2-7-77, filed. |
| 2-18-77 | Marshal's return on subpoena executed at Dr. Arthur A.Derrick, Jr., 2-16-77, filed. |
| 2-19-77 | EXHIBITS G-L thru G-28; D-1 thru D-7, filed. |
| 2-19-77 | Jury Verdict:"We the jury, find the defendant guilty of Counts 1 thru 7", filed. |
| 2-19-77 | Exhibit I to in camera proceedings- post trial before Judge Countiss, only to be opened before a Court of competent jurisdiction, by Order of Judge John R. Countiss, III filed. |
| 2-23-77 | Deputy Clerk's Sheet: Trial 42 hrs. 05 minutes in Meridian, Miss. Judge Dan M.Russell, Jr. presiding, Denton B. Jordan Court Reporter 2-14-77 thru 2-19-77. Action Taken: 2-18-77 jury retired at 4:25 P.M. to deliverate. At 9:45 p.m. jury sequestered and returned on 2-19-77 at 8:00 to continue deliberation. Jury returned verdict at 10:05 A.M., finding defendent guilty on all seven counts. Joe O.Chambers, Foreman Jury discharged. |

AO-257

Interval | Start Date

NITED STATES DISTRICT COURT
RIMINAL DOCKET

| DATE | PROCEEDINGS (continued)<br>(Document No.) | V. EXCLUDABLE DELAY (a) | (b) | (c) | (d) |
|---|---|---|---|---|---|
| 2-[illegible]-77 | In chambers, deft's attorney requested to inspect jury room and to view all writings made by jurors, U.S.Marshal inspected jury room and brought in contents of two waste baskets and contents were examined by Judge Countiss. All papers with writing were put in sealed envelope and placed in vault. Deft's attorney made request to interview foreman of jury, which was denied by Judge Countiss, filed. | | | | |
| 2-23-77 | Instructions objected to by defendant, in sealed envelope, filed. | | | | |
| 2-23-77 | Marshal's return on subpoena executed as to Glenn Pace, Miss. Highway Patrol, 2-14-77 filed. | | | | |
| 2-23-77 | Marshal's return on subpoena executed as to Marvin Walker, 2-14-77, filed. | | | | |
| 2-23-77 | Marshal's return on subpoena executed as to James Hanna 2-14-77, filed. | | | | |
| 2- -77 | Marshal's return on subpoena executed as to James R. Blackburn 2-18-77, filed. | | | | |
| 2-23-77 | Marshal's return on subpoena executed as to M.C. Valentine 2-18-77, filed. | | | | |
| 2-25-77 | Marshal's return on Order of Judge Dan M.Russell, Jr. that the jury be kept together in the custody of the United States Marshal and that said Marshal make proper provision for their meals and lodging at the expense of the United States until such time as they shall have reached a verdict, or are otherwise discharged 2-17-77 and 2-18-77, filed and entered OB 1977 page 47. | | | | |
| 3-10-77 | Defendant's Motion to have Defendant sentenced under Sections 842 & 843 of Title 21 United States Code, with cert. of service, filed. | | | | |
| 3-10-77 | Defendant's Motion for a Judgment of Acquittal, with certificate of service, filed. | | | | |
| 3-10-77 | Defendant's Motion for a New Trial, with certificate of service, filed. | | | | |
| 3-10-77 | Notice of hearing of above motions, before Judge Dan M.Russell, Jr., on March 14, 1977, at 9:00 a.m. in the Federal Building, Jackson, Miss., with cert. of | | | | |

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U.S. vs .lly Ray Shows, M.D.

E76-13(R)
Yr. Docket No.

| DATE | PROCEEDINGS (continued) (Document No.) | V. EXCLUDABLE DE (a) | (b) | (c) |
|---|---|---|---|---|
| | service, filed. | | | |
| 3-18-77 | Electric recording D.B.Jordan, Court Reporter, envelope No. 46, filed. Meridian, Miss. | | | |
| 3-21-77 | Deputy Clerk's Sheet; Hearing on 1. Motion for Judgment of acquittal; 2. Motion to have Defendant sentenced under Sections 842 and 843 of 21 USC. 1 hr. in Meridian, Miss. before Judge Dan M.Russell, Jr., Denton B.Jordan Court Reporter, on 3-18-77, Action Taken: Court adjudged defendant guilty; both motions overruled. filed. | | | |
| 3-24-77 | Sentence: Counts 1,2,3,4,5, and 6: Imposition of sentence is hereby suspended and the defendant is placed on probation for a period of two (2) years on each of said counts, the periods of probation to run concurrently for a total of two (2) years, and to commence after defendant's release from custody on the sentence imposed on Count 7.<br>Count 7: IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of one (1) year under 18 U.S.C. 4205(f) to be released on parole after service of one-third of such term.<br>IT IS FURTHER ADJUDGED that the defendant be placed on special parole for a period of two (2) years, filed and entered CJB. No. 7 page 73. | | | |
| 3-24-77 | Judgment and Commitment distribution; one (1) copy to U.S.Attorney, one (1) copy to CUSPO and two (2) copies to U.S.Marshal. | | | |
| 3-25-77 | Notice of Appeal by Defendant from judgment of conviction and sentence entered on March 18,1977, to the United States Court of Appeals for the Fifth Circuit, with certificate of service,filed. | | | |
| 3-28-77 | Order overruling motion for judgment of acquittal is hereby overruled, filed and entered OB 1977, page 78,(copies mailed to U.S.Atty). | | | |
| 3-28-77 | Order overruling Motion to sentence defendant under Section 842, Title 21, U.S.C. is hereby overruled filed and entered OB 1977, page 79.(Cert. copies mailed U.S.Atty). | | | |

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

| DATE | PROCEEDINGS (continued) | V. EXCLUDABLE DE | | |
|---|---|---|---|---|
| | (Document No.) | (a) | (b) | (c) |
| 3-28-77 | Order imposing special conditions of release, filed and entered OB 1977, page 80. (Cert. copies mailed U.S.Attorney). | | | |
| 4-4-77 | Deputy Clerk's Sheet: Hearing on motion for new trial in Vicksburg, Miss., Judge Russell presiding, Denton B. Jordan Court Reporter, on April 4,1977. Action Taken: Overruled; Order to be Submitted, filed. | | | |
| 4-7-77 | Order overruling motion for new trial, filed and entered OB 1977, page 100. (Cert. copies mailed to U.S.Attorney). | | | |
| 5-12-77 | Transcript of proceeding of Court Reporter begun on 2-14-77 Judge Russell's Court in Meridian, Miss. five (5) volumes, filed. | | | |
| 8-23-77 | Order: The Court is of the opinion, so finds and hereby orders that each of the foregoing items of evidence be delivered to an authorized agent of the Drug Enforcement Administration for safekeeping pending the final conclusion of this matter. It is further ordered that upon final conclusion of this matter, the Drug Enforcement Administration is hereby authorized to dispose of each of the items in such a manner as it sees fit and proper and in accordance with its regulations, filed and entered OB 1977, pages 244-245. (Copy mailed U.S.Attorney, copy mailed Drug Enforcement Administration). | | | |
| 1-25-78 | Order of Fifth Circuit Court of Appeals; Affirmed. See Local Rule 21 1/ issued as mandate January 19, 1978, filed and entered O.B.1978 page 21. | | | |
| 01-30-78 | Surrender Order; the defendant, Billy Ray Shows, M.D. is hereby ordered to surrender himself unto this Court at the United States Marshal's Office, Room 402, United States Courthouse and Post Office Building, Jackson, Mississippi at 9:00 a.m. on February 13,1978, on February 13,1978, to begin the service of the sentence of the Court, filed and entered O.B.1978, page 27. (Cert. copies mailed to U.S.Atty, 2 copies mailed to U.S.Marshal, and copy mailed United State Probation office). | | | |
| 02-16-78 | Marshal's return on surrender order, defendant reported to U.S.Marshal on 13th day of February, 1978, reported to Eglin AFB prison camp. filed. | | | |

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U.S. vs SHOWS Billy Ray

E76-13(R)
Yr. | Docket No. | D

V. EXCLUDABLE DELA

| DATE | PROCEEDINGS (continued) (Document No.) |
|---|---|
| 2-23-78 | Marshal's return on judgment and commitment executed on defendant by delivering to Eglin AFB Florida on 2-14-78, filed. |
| 3-27-78 | Defendant's motion for the reduction of sentence, with cert. of service, filed. |
| 3-27-78 | Defendant's Notice of motion for reduction of sentence on 2nd day of May, 1978, at 9:00 a.m. before Judge Russell in Gulfport, Ms. filed. |
| 4-13-78 | Order denying reduction of sentence, filed and entered Ob. 1978, page 183. (cert. copy mailed U.S.Atty copy mailed Paul Holmes). |
| 4-17-78 | Deputy Clerk's Sheet: Hearing on motion for reduction of sentence, 15 minutes in Jackson, Ms. before Judge Dan M.Russell, Jr., David Scott Court Reporter on 4-11-78 Action Taken: Motion denied, order to be submitted. filed. |
| 7-12-78 | Court Reporter's notes filed in Jackson Division in Office of David Scott 4-11-78, filed. |

AO 256A

Interval (per Section H) | Start Date End Date | Ltr. Code | T. D

912 BLANK

# EXHIBIT N - 13

W.R.FAIRCHILD CONSTRUCTION COMPANY, LTD.

P. O. BOX 1887 • TEL. 544-1151 • HATTIESBURG, MISSISSIPPI 39401

WILEY FAIRCHILD
PARTNER AND
GENERAL MANAGER

July 31, 1984

Walter L. Nixon, Jr.
P.O. Drawer A
Biloxi, MS 39533

Dear Mr. Nixon:

In checking our records, we find an error was made in computing the interest on your three notes with us dated February 25, 1980.

The amount of additional interest due is $1,149.49 as per the enclosed computations.

After checking your records, and if we are in agreement, please send your check to cover the balance due.

Sincerely,

W. R. FAIRCHILD CONSTRUCTION COMPANY, LTD.

Billy Riley

Billy Riley

BR/kdn

Enclosure

$951.10

## WALTER L. NIXON, JR.

## $2,000.00 NOTE AT 10% INTEREST

| DATE | DAYS | INTEREST | INTEREST PAID | INTEREST BALANCE | PRINCIPAL PAID | PRINCIPAL BALANCE |
|---|---|---|---|---|---|---|
| 2-25-80 | | | | | | 2000.00 |
| 2-25-81 | 365 | 200.00 | | 200.00 | | 2000.00 |
| 2-25-82 | 365 | 200.00 | | 400.00 | | 2000.00 |
| 3-16-82 | 19 | 10.41 | 210.41 | 200.00 | 789.59 | 1210.41 |
| 9-16-82 | 184 | 61.02 | 61.02 | 200.00 | 1210.41 | -0- |

## WALTER L. NIXON, JR.

## $3,000.00 NOTE AT 10% INTEREST

| DATE | DAYS | INTEREST | INTEREST PAID | INTEREST BALANCE | PRINCIPAL PAID | PRINCIPAL BALANCE |
|---|---|---|---|---|---|---|
| 2-25-80 | | | | | | 3000.00 |
| 2-25-81 | 365 | 300.00 | | 300.00 | | 3000.00 |
| 2-25-82 | 365 | 300.00 | | 600.00 | | 3000.00 |
| 3-16-82 | 19 | 15.62 | 315.62 | 300.00 | 1184.38 | 1815.62 |
| 9-16-82 | 184 | 91.53 | 91.53 | 300.00 | 1315.62 | 500.00 |
| 3-01-82 | 166 | 22.74 | 22.19 | 300.55 | 500.00 | -0- |

## WALTER L. NIXON, JR.

## $4,500.00 NOTE AT 10% INTEREST

| DATE | DAYS | INTEREST | INTEREST PAID | INTEREST BALANCE | PRINCIPAL PAID | PRINCIPAL BALANCE |
|---|---|---|---|---|---|---|
| 2-25-80 | | | | | | 4500.00 |
| 2-25-81 | 365 | 450.00 | | 450.00 | | 4500.00 |
| 2-25-82 | 365 | 450.00 | | 900.00 | | 4500.00 |
| 3-16-82 | 19 | 23.42 | 473.42 | 450.00 | 2026.58 | 2473.42 |
| 9-16-82 | 184 | 124.69 | 124.69 | 450.00 | 1184.38 | 500.00 |
| 3-01-83 | 166 | 22.74 | 22.19 | 450.55 | 500.00 | -0- |

Walter L Nixon Jr
$2,000.00 Note @ 10% Interest

| Date | Days | Interest | Payment | Balan |
|---|---|---|---|---|
| 2-25-80 | | | | 200 |
| 2-25-81 | 365 | 20000 | | 220 |
| 2-25-82 | 365 | 22000 | | 242 |
| 3-16-82 | 19 | 1260 | 100000 | 143 |
| 9-16-82 | 184 | 7222 | 127143 | 23 |

Walter L Nixon Jr
$3,000.00 Note @ 10% Interest

| Date | Days | Interest | Payment | Balan |
|---|---|---|---|---|
| 2-25-80 | | | | $30 |
| 2-25-81 | 365 | 30000 | | 33 |
| 2-25-82 | 365 | 33000 | | 36 |
| 3-16-82 | 19 | 1890 | 150000 | 214 |
| 9-16-82 | 184 | 10833 | 140715 | 85 |
| 3-1-83 | 164 | 3866 | 52219 | 36 |

Walter L Nixon Jr
$4,500.00 Note @ 10% Interest

| Date | Days | Interest | Payment | Balan |
|---|---|---|---|---|
| 2-25-80 | | | | $4,5 |
| 2-25-81 | 365 | 45000 | | 495 |
| 2-25-82 | 365 | 49500 | | 54 |
| 3-16-82 | 19 | 2834 | 250000 | 297. |
| 9-16-82 | 184 | 14989 | 209811 | 102 |
| 3-1-83 | 166 | 4662 | 52219 | 54 |

EXHIBIT N - 14

W. R. FAIRCHILD CONSTRUCTION COMPANY LTD. - OIL DIVISIO

FAIRCHILD - WINDHAM EXPLORATION COMPANY

P.O. Box 1857
Hattiesburg, MS 39401
601 544-115

WILEY FAIRCHILD
PARTNER AND
GENERAL MANAGER
RODNEY FAIRCHILD
PARTNER
JOHNNIE R. FAIRCHILD
LAND MANAGER
LYNN S. JONES
ADMINISTRATIVE
ASSISTANT
MICHAEL B. MOORE
ASSISTANT MANAGER

July 16, 1984

TO WHOM IT MAY CONCERN:

The following figures are based on original costs of the mineral interest in the following three wells in which Judge Walter L. Nixon bought an interest:

Wilkie Gas Unit, Mobile County, Alabama

Bought 3 overriding royalty acres or 1.8% or 1/55th of what WRFCC owns.
Profit margin of 23.43 times cost of acreage or 2,343% profit.

L. D. Ross Well, Covington County, Mississippi

Bought 5 overriding royalty acres or 1.4% or 1/71st of what F-W owns.
Profit margin of 13.29 times cost of acreage or 1,329% profit.

Rogers 28-11 Well, Marion County, Mississippi

Bought 3 overriding royalty acres or 4.46% or 1/22nd of what WRFCC owns.
Profit margin of 83.13 times cost of acreage or 8,313% profit.

Note that Wiley Fairchild is a minority interest owner in WRFCC and F-W.

Respectfully,

Lynn S. Jones
Administrative Assistant
Oil Division

LSJ

cc: Billy J. Riley
Comptroller

EXHIBIT N - 15

## NEWS ANNOUNCEMENT

September 6, 1984

A Federal Grand Jury sitting in the Southern District of Mississippi today returned a two-count indictment naming Hattiesburg businessman Wiley FAIRCHILD as a defendant. The first count charged FAIRCHILD with giving an illegal gratuity in 1981 to Federal Judge Walter Nixon in the form of mineral royalty interests. The second count charged FAIRCHILD with committing perjury in the Grand Jury when he testified about circumstances surrounding the transfer of the royalty interests to Judge Nixon.

As to the first count, Assistant Attorney General Stephen S. Trott, head of the Criminal Division of the U. S. Department of Justice, advised that the law requires that the donor provide the gratuity "because of an official act" to be performed by the public official. The law is clear that the giving and receiving of an unlawful gratuity are separate offenses, Trott said. The recipient's intent may differ from the donor's intent. The indictment alleges criminal intent on the part of the donor but not on the part of the recipient of the gratuity. Therefore, although named in the indictment, Judge Nixon is not a defendant in this case; and, this indictment accuses Judge Nixon of no wrongdoing.

EXHIBIT N - 16

WEINGARTEN:
For the record it is approximately 4 PM on November 1, 1984. We are at the FBI Office in Jackson, Mississippi. Present are Reid Weingarten and Marshall Jarrett from the United States Department of Justice in Washington, Weldon Kennedy from the FBI here in Jackson, Mr. Wiley Fairchild accompanied by his attorney, Wallace Gunn, and John Baltar. We are present pursuant to an agreement between counsel wherein Mr. Fairchild will make a proffer in anticipation of plea negotiations and pursuant to agreement, we will proceed by the United States Attorneys posing questions to Mr. Fairchild. Is that correct for the record?

That's correct.

WEINGARTEN: Okay. Now Mr. Fairchild, of course you're, so you understand, you're presently scheduled to proceed to trial on December 4, 1984. What you're doing now, is you're making a proffer to the United States as the opening salvo in potential plea negotiations. Let me begin by asking you generally, what information do you have as we sit here that might add to or alter your Grand Jury testimony that you gave in Hattiesburg some months ago?

Mr. FAIRCHILD:
Preacher Shows, who lives in Covington County, me and him have been political friends for 30 years. His son made a doctor. I've loaned him some money to go to school. He later got indicted for selling controlled substance, drugs, writing prescriptions. They tried him and convicted him. Judge Nixon was the judge. He come to Hattiesburg and asked me did I know anybody in Washington that would that I could get to intervene. I said "No". I had heard about Bud Holmes that, flying Nixon to Colorado skiing and different places and having parties out there. I said, "Go see Bud Holmes."

WEINGARTEN: Did you say this to the father or to the son, the doctor? Is this the father?

Preacher Shows.

Preacher Shows, the father.

WEINGARTEN: How do you spell that last name?

S H O W S.

WEINGARTEN: Okay. Preacher is the first name? Is he a preacher or is that just his

Well he is a kind of a preacher, yeah, but ah

Do you know his name Mr. Fairchild?

That's all I know is Preacher and just Dr. Shows, and so I told him to go see Bud Holmes. Dr. Shows and Preacher Shows, his dad, went to see Bud Holmes, went to his home, and they showed him pictures of the judge and all that, you know, kind of put on the dog, you know.

**FAIRCHILD Cont'd:**

and they give him a check for $10,000, and Dr. Shows was satisfied because he expected to get a 18 months sentence, and he got, I think, 6 months but then he wanted to get back, wanted Bud to help him get back to where he could practice again, and Bud wouldn't talk to him. I called Bud and he said oh I didn't, I didn't charge him nothing, said I never was a lawyer of record. I believed Bud and I told Preacher Shows that, I said, "You didn't give Bud no money", he said, "Yeah, I give him a $10,000 check." He brought the canceled check too.

**WEINGARTEN:**
Was it made out to Bud Holmes?

**FAIRCHILD:**
Yes.

**WEINGARTEN:**
Do you remember what it said on the back? Was it cashed? Do you remember?

**FAIRCHILD:**
I don't remember. Well, I looked at it, but I don't remember. Wasn't no doubt in my mind the check was cashed. So this was sometime back, see. So when Carroll come--

About six years ago he thinks.

**FAIRCHILD:**
Year, about six years ago. So when Carroll come and asked me to put the Judge in a good deal, you know the thing just registered with you, you know.

**WEINGARTEN:**
Well, did you have any reason to believe that any of the money, any of the $10,000 that Preacher Shows gave to Bud got to Nixon?

**FAIRCHILD:**
Well I believe that $10,000 got it reduced from 18 months to 6 months. But that's, well it's just obvious, the pattern was 18 months, 18 months of a first offense.

**WEINGARTEN:**
Did Bud Holmes tell Preacher Shows or his son what happened to the money?

**FAIRCHILD:**
I don't know, but Preacher Shows is still in, the Government is still after him. They're still after him, and

**WEINGARTEN:**
You mean the son?

**FAIRCHILD:**
Yeah.

**JARRETT:** Dr. Shows, is he the one that lives in Newton?

FAIRCHILD:
Yessir.

Okay.

FAIRCHILD:

Because he come to me, Dr. Shows, again, see, and told me I just don't remember what all, but wanting me to intervene again, see. And, ah and he was going to Texarkana and seeing this fellow see. This convict was in there, who had, Naw, a convict there.

Was his name Smith? You don't know his name?

FAIRCHILD:
I don't know his name. But anyway they got that fellow and brought him to Jackson here and he said to the FBI, I assume here, that Dr. Shows told him, said you don't have nothing to worry about. Says I got George Phillips.

JARRETT:
Shows is telling this to who?

FAIRCHILD:
Shows telling

JARRETT:
To this convict?

FAIRCHILD:
No, no, the ex-convict was supposedly testifying to the FBI here or George Phillips. Not George Phillips, the prosecutor. And he says you don't have to worry about your case, says I got George Phillips fixed with a contractor friend in Hattiesburg.

Who said that?

FAIRCHILD:
The convict that they brought from Texarkana.

WEINGARTEN:
Said that to Dr. Shows?

FAIRCHILD:
Yeah. George Phillips called Carroll Ingram. That's where I got my information. So I, Preacher Shows come down to see me and I said, Preacher, you've embarrassed the hell out of me. I told him what happened. I said, I've said nothing about it. I said, besides George Phillips, I don't think nobody can get to him. He hasn't been back to my office since. So much for that.

WEINGARTEN:
I'm just a little confused.

JARRETT:
Yeah, I am too, Let me ask you about that. The convict was saying that he had George Phillips taken care of or Shows was saying he had George Phillips taken care of?

FAIRCHILD:
Shows told the convict that he had George Phillips taken care of through a contractor friend in Hattiesburg.

WEINGARTEN:
Is there any reason to believe that?

FAIRCHILD:
No, no, no.

JARRETT:
Were they referring to you as the contractor?

FAIRCHILD:
Yes.

JARRETT:
They were referring to you. Okay.

FAIRCHILD:
The doctor was trying to get this convict here to not squeal on him. That was in my opinion.

WEINGARTEN:
I see. So that's all garbage. That part's not true?

FAIRCHILD:
That's all garbage. Yes, absolutely, I never talked to George about anything since he's being prosecuting.

WEINGARTEN:
So that the important evidence is that Preacher Shows gave $10.000 to Bud Holmes for his son's case. His son was originally anticipating 18 months, wound up with a sentence of six months.

FAIRCHILD:
Yeah.

WEINGARTEN:
Now, Preacher Shows goes back to Bud Holmes and says I want my son to resume his practice and Bud says, "No, I can't help you there."

FAIRCHILD:
Well he wouldn't return his phone calls or something, so he got me to call Bud Holmes, see.

**WEINGARTEN:**
And Bud said to you again?

**FAIRCHILD:**
He says, ah, "Oh, I never was attorney of record." Says, "I didn't charge him anything."

**WEINGARTEN:**
Do you happen to know who was the attorney of record? Who represented the son?

**FAIRCHILD:**
It was some lawyer here in town.

**WEINGARTEN:**
Was there a jury trial or was it a plea of guilty?

**FAIRCHILD:**
No, it was a jury trial.

**WEINGARTEN:**
Do you remember who the prosecutor was? Would you know that?
Was it John Hopgood (or Hopson)?

**FAIRCHILD:**
No. (It was his assistant)

**WEINGARTEN:**
Was it a Federal case? Obviously it was a Federal case, it was Judge Nixon.

**FAIRCHILD:**
Oh yeah, yeah, it was a Federal case.
You could make a phone call to Preacher Shows. Get one of your men over there, he'd tell you.

**WEINGARTEN:**
I'm sure we could pull the file.

**FAIRCHILD:**
Oh yeah.

**JARRETT:**
We know Dr. Shows.

**GUNN(?):**
There would probably be some phone calls at that time from Bud to Judge Nixon. That was six years ago.

**WEINGARTEN:**
And you were about to start on the time when someone came to you or Carroll came to you and

**FAIRCHILD:**
And asked me to put Judge Nixon in a deal. He said he had kids in school in college and he was having a hard time, so I put him in a deal and I put him in three different deals that I thought would pay off good because I was scared not to, although three months before my son had done done his plea bargain with George, I'm getting confused.

**WEINGARTEN:**
No, that's true, that's true. So far, so good.

**FAIRCHILD:**
When I actually signed the deeds, you know, and it was so called, you know, when I actually signed them, three months before that I had, I had

**WEINGARTEN:**
Drew had been up here.

**FAIRCHILD:**
Yeah, made his plea bargain. But anyway when he asked me, knowing, and I wish I had made this statement to start with, I want to cooperate with you all to the fullest extent. If it hadn't been for them three damn crooks, I wouldn't be into it, see.

**WEINGARTEN:**
When you say three who are you referring to?

**FAIRCHILD:**
Carroll, Bud Holmes and the Judge. I'm going to do everything I can, I'm going to tell you everything I can remember. Now there may be some things I can't remember that might, if Carroll decides to cooperate and I think he will when the nut cutting, when gets down to that. He might can freshen my memory and Skip Jarvis might could refresh my memory. I said that before the Grand Jury that I didn't well that I didn't remember negotiating on the price but I know I did. I just had to be and change that from 1 acre to 3 acres. Wouldn't nobody have done that but me.

**WEINGARTEN:**
I know that.

**FAIRCHILD:**
But there's where Skip or Carroll Ingram

**WEINGARTEN:**
Well what would have caused, who, would it have been because Nixon wanted more?

**FAIRCHILD:**
Obviously it was something that was said to me that caused me to do that see and I'm being honest when I just can't remember. That's why I say that if Skip or Carroll or if I could and I'm just, again when I decide to come up here and do this I'm talking to people, you know, that will jog my memory up see, and my son has told me some things that I had forgotten all about. One of the things that he

**FAIRCHILD Cont'd:**
told me about that I called his wife and told her Carroll had brought me a copy of this thing where it had been passed to the file, see, his case had been passed to the file. She come over there and got it, but these, that's on December 23. But anyway, we been trying to get some dates from Maxwell Air Force Base. A day that Bob Broyles and Bill Porter went over there and spent one weekend to see Joe Crone and my testimony before the Grand Jury. He come out there, I think it was a Monday morning see, and says to me, Bob Broyles said to me, and Bob Broyles said to me, now Bob Broyles was a partner with Drew see at the airport, they were 50-50 partners, but he says to me, says Bill Porter coming on back from Montgomery, said if Drew would get up off his money he could come clean and Bob Broyles said, Well, Drew don't have no money. And he said well, But his old man does. He said well, that not his. That's not Drew's money, that his and he said well if he knew his son's ass was going to get in a crack he'd get up off of it. Bob was sitting across, and I said,Now Bob, I've got your message but the answer is not No, it's Hell No. I'm trying to place that date with the time that I called Carroll and told him to bring Judge Nixon out to the office. But anyway Carroll brought him out to the office.

**KENNEDY:**
You're apparently angry about this. This made you real angry. Is that why then you called Ingram.

**FAIRCHILD:**
Oh very angry. I get angry everytime I talk about it. Your men will tell you that when they come down there, when I asked them to come down there. But anyway, Nixon come in and I talked to Nixon just like I would, uh, if I had a tape recording of it. I told him, I said, Now my son is guilty. But I said Bob Broyles there is just as damn guilty. He was at the airport and my son was in the bed asleep. But I said he indicted my son because his dad had some money. And I said I don't like it a damn bit but just go indict this other fellow and go threat them both alike. I told Judge Nixon that and I were mad and I think I, then, this was one evening. My secretary remembers Carroll bringing a man in the office and him staying there, and she carried him on back to the coffee. Carried Carroll back.

**WEINGARTEN:**
Is this Margaret Buckley?

**FAIRCHILD:**
No, she's more of the bookkeeper type. This, and,

This secretary is still there?

**FAIRCHILD:**
She's there, yes.

**WEINGARTEN:**
Does she remember seeing Judge Nixon? Secretary?

FAIRCHILD:
Yeah, I asked her when you asked me to find out this yesterday and but she wouldn't recognize him. So

Did she remember Carroll?

FAIRCHILD:
Oh yeah, she remembered Carroll.

She remembered Carroll bringing a man back there who she didn't know and taking him in the office and then she took Carroll back to the coffee room and Mr. Fairchild

FAIRCHILD:
So that night I had just lay down, phone rang, and a voice said, Wiley, says the man that we talked about this evening, I'm over at his house. He says and I've talked to him and things are going to be all right. I said, well good.

Who called you?

Judge Nixon.

WEINGARTEN:
Was it Judge Nixon? Did you recognize him?

FAIRCHILD:
Yeah I recognized him, but I'm giving you verbatim what was said, see. And so I guess he was scared the phone might be tapped.

KENNEDY:
He said again what now. Say what he said again.

FAIRCHILD:
He said, Wiley, the man that we talked about this evening, I'm over at his house and everything is going to be all right. I said, well good. We said something else, you know, I'd done got the important thing, I don't remember. But after awhile, he said, "He wants to talk to you. I said, Good and he says, of course Bud got on the phone and he said, Wiley when this man asks me to do something, says, I don't ask no questions, I just do it. I said, Well I appreciate that very much. So that ended that and we're trying to tie that date down because when Bob Broyles came back from Maxwell, see, and I think it was pretty close to the time it was passed to the files.

WEINGARTEN:
Well, why did you want Judge Nixon then because at that point the case was in state court. Why did you tell Carroll to bring you Judge Nixon?

FAIRCHILD:
He owed me a favor. That's the way I looked at it.

WEINGARTEN:
And why was that, just so it's clear?

FAIRCHILD:
Well I had put him in what I thought was 3 good deals but turned out it was two good deals.

WEINGARTEN:
What else? What other things can you tell us that add to your Grand Jury testimony?

FAIRCHILD:
Well to get back to the price of that and to the dating of them, you know like I said awhile ago, I hadn't since I decided to do this, I hadn't you know done things and went back over things where, but the biggest thing, if Skip Jarvis or Carroll Ingram could help me remember what went on about the back dating, I know what went on about the back dating. We went ahead and made them out and sent them to Carroll, see, and he said back date them see. Of course they were first dated when they were supposed to be.

WEINGARTEN:
Okay, can we go off the record for a second?

EXHIBIT N - 17

Ken,

As I told you over the telephone, I am not sending these copies for anything other than your information. I recognize that things are beginning to move on the investigation and that this is really a trivial matter. My main concern upon first seeing them was that Wiley feels secure enough in his position that he can volunteer you to undermine my credibility. [I realize that I jumped to the wrong conclusion and apologize.]

5/85

By the way, four down (Wiley, Drew, Royals, and Holmes). [I'm eager to go after the big prize.]

Keep in touch,

Skip

P.S. I would still like to know who wrote the letter to Nola at Thanksgiving.

Kws

W.R.FAIRCHILD CONSTRUCTION COMPANY, LTD.

P. O. BOX 1657 • TEL. 544-1151 • HATTIESBURG, MISSISSIPPI 39401

WILEY FAIRCHILD
PARTNER AND
GENERAL MANAGER

April 16, 1985

Mrs. Elma Manasco
Route 2
Seminary, MS 39479

Dear Elma:

The persons that got Ruth to call Nola thought they were doing the best thing in the long run for Pam and the two kids and you. I know this for a fact.

Ruth didn't have anything to do with the phone numbers that Nola got through the mail, she didn't even know they were being mailed. You would have to have all the information these persons that got Ruth to call had to understand what I am saying.

The information these persons had that got Ruth to make the call believe that had Pam called these two persons, she would never have left Forrest County.

Sometimes things happen for the best. I understand Skip and Pam are closer together then they have been for sometime. That is not only best for them, but certainly best for the kids.

Sincerely,

Wiley

Wiley

WF/kdn

cc: Audrey
Lola
Glydia Mae
Ruth

W.R.FAIRCHILD CONSTRUCTION COMPANY, LTD.

P. O. BOX 1857 • TEL. 544-1181 • HATTIESBURG, MISSISSIPPI 39401

[illegible] FAIRCHILD
PARTNER AND
GENERAL MANAGER

April 23, 1985

Elma Manasco
Route 2
Seminary, MS 39479

Dear Elma:

Mr. Whitespooner, the FBI agent whom Skip called and gave the information that lead to my indictment, has told me and John Saltar that he would be glad if I would get any of my sisters together that does not believe the above and the below and he would be glad to talk to them or he would call them on the telephone. Also, to tell all of you that the rumor you have been putting out that they have been after Rodney and me since 1975 for smuggling marijuana is false. Also, Mr. Whitespooner said the FBI does not have a brake line that has been cut, which I understand Skip is inferring we had this done to try to get him killed.

I probably could get Mr. Whitespooner and we could have a meeting after the reunion or the next day.

I will only get him if you want to talk to him. I understand my other four sisters know the true story about Skip. There also is a tape where Skip came out to my office and talked to me for an hour trying to get incriminating evidence for the FBI. Elma, I don't have any animosity towards you nor any of my sisters because Skip has told you some untruths and you believed them. Because at one time Skip had me snowed as bad as he has got you snowed. In his attempt to oust me from the Company, he had Jeannie and Little Marie believing him before they would believe me.

Rodney and I have no alternative but to prove those rumors you have been spreading to be 100% false. You, nor anyone else can blame us for wanting to get something straight that has damaged our reputation in the community where we were raised like this has.

I won't go into any other details, but there are several letters I have written to my other sisters explaining in detail the situation that makes a clear picture that Skip's intentions was to take over the Company. These letters will prove Rodney and I never did harrass Skip in any way. What Skip has said about that is also false. The reason Skip would not

Continued on Page 2

take the lie detector test was because he and Johnnie Fairchild were already planning to get me ousted from the Company. Johnnie has admitted this.

Sincerely,

Wiley

Wiley

P.S. If you want a copy of all the other letters I have sent to the other sisters, just call Mike and I will be glad to send them to you.

WF　　　　Mike Moore - 722-4500

cc: Audrey
Lola
Glydia Mae
Ruth
Coy Fairchild
Iris Fairchild
Nola Manasco
Maggie Fairchild
H. B. Hatten
Hubert Sanford
Mack Fairchild
Louis Ingram

JERRY M. BLAIR
STATE ATTORNEY
THIRD JUDICIAL CIRCUIT
P O. DRAWER 1546
LIVE OAK, FLORIDA 32060 - [illegible]

JACKSONVILLE, FL 322
PM
19 JUN
1985

S.A. KEN WHITE-SPUNNER
FEDERAL BUREAU OF INVESTIGATION
P. O. BOX 1939
PASCAGULA, MISSISSIPPI 39567

EXHIBIT N - 18

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | * | CRIMINAL ACTION |
| VERSUS | * | NO. H-84-00009 |
| WILEY FAIRCHILD | * | |

* * * * * * * * * * * * * * *

Transcript of the Sentencing held in the above numbered and entitled cause before the Honorable Patrick E. Carr, presiding Judge on the 18th day of September, 1985.

APPEARANCES:

FOR THE GOVERNMENT:

Reid Weingarten
Jan Little
United States Department of Justice
P. O. Box 50168
F Street Station
Washington, D.C. 20004

FOR THE DEFENDANT, WILEY FAIRCHILD:

HESS, ATCHISON & HORNE
(BY: Richard Horne)
301 St. Joseph Street
P. O. Box 1706
Mobile, Alabama

REPORTED BY: ARLENE MOVAHED, O.C.R.

# PROCEEDINGS

THE CLERK: Criminal Number H-84-00009, United States of America versus Wiley Fairchild.

MR. HORNE: Good morning, Your Honor. My name is Richard Horne. I am appearing on behalf of my partner, Barry Hess and our law firm, representing Mr. Fairchild in this matter.

MR. WEINGARTEN: Good morning, Your Honor. Reid Weingarten from the Justice Department along with Jan Little representing the United States.

THE COURT: Let the record reveal Mr. Fairchild is present. You are, of course, Mr. Fairchil and you are aware that you have the right to have this sentence passed in the Southern District of Mississippi. You have been advised of that several times in the past, is that correct?

MR. FAIRCHILD: I am satisfied.

THE COURT: And you will waive any right you have to have the sentence imposed in the Southern District of Mississippi and consent to the sentenc being imposed in New Orleans?

MR. FAIRCHILD: Yes, sir.

THE COURT: Is the defendant read for sentencing?

MR. HORNE: He is, Your Honor.

THE COURT: Counsel, do you have anything to say on behalf of your client or in mitigation?

MR. HORNE: I do, Your Honor.

THE COURT: Proceed.

MR. HORNE: Judge, I want to thank the court for allowing me to appear on behalf of Mr. Fairchild and also thank you for Mr. Hess who, as you're aware, who is in trial in Mobile.

Wiley Fairchild has pled guilty previously and that matter is history. The crime with which he is charged is certainly a serious one and it strikes at the heart of our judicial system. As a lawyer I certainly appreciate that. I believe that Mr. Fairchild appreciates that. We are not here in anyway to say anything about that guilty plea for he stands on all fours on that plea.

I would like to bring to the Court's attention, and I believe it's reflected in the pre-sentence investigation, that Mr. Fairchild's participation here was not the active seeking out of someone to influence and then influencing them, it is someone who came to him and sought favor or whatever from him. That appears to be the MO of the parties involved. And I believ that is reflected in the indictment or in the subsequent indictments that have been brought in this case. His acquiescence in this matter certainly does not in any way, shape or form detract or diminish the guilty plea he has entered.

I would like to commend the Probation Office for the thorough pre-sentence investigation that they have prepared in this matter and I know that the Court will take my remarks in addition to the pre-sentence investigation.

The point, I suppose, that I would like to make with regard to Mr. Fairchild is that it has been my pleasure to know him for only a short period of time. During that period of time I have been impressed by several things. One is his candor. The other is his standup nature. In my opinion, and I submit to the Court, he has appreciated and does appreciate and will continue to appreciate his error. I believe that his guilt plea and his cooperation since that guilty plea speaks for itself. I believe Mr. Weingarten can more accurately address those matters than I can for he has certainly been present at all those proceedings.

I would also like to mention to the Court that having pled guilty he must be sentenced, he must be punished and he appreciates that. There are alternatives available to the Court in sentencing

In his presentence investigation several of those matters are brought up. As you are aware Mr. Fairchild is a very wealthy man and the Court might be of the opinion that a fine would mean nothing to him. The Court is also aware of the numerous and extensive community service and educatio service he has provided to South Mississippi through grants, through gifts, scholarships and the like. And so the Court might be of the opinion that community service would not be a meaningful alternative. I can only ask the Court that it must, it must punish and it must feel that Mr. Fairchild understands in a meaningful way what he has done, but I ask the Court that because of his participation before in community service and the fact that he has made money not to rule out those alternatives.

I think if the Court looks at his cooperation, and he will tell you with his own words of his intent to continue to cooperate, that you can appreciate that perhaps like Paul Newman in the movie HUD when he looked up out of the hole and he said, "My mind is right." I believe Mr. Fairchild has been touched. I hope the Court can see fit in it's wisdom to give him a sentence that does not demand incarceration.

Thank you, Your honor

THE COURT: Mr. Fairchild, would you like to say anything in your own behalf?

MR. FAIRCHILD: Your Honor, I made a mistake. In so doing I violated the law of the United States. I am sorry. I have been cooperating with Mr. Weingarten and I pledge to continue cooperating. I have pled guilty to violating this law and I stand before this Court, Your Honor, ready to receive whatever sentence you impose. Thank you.

THE COURT: Mr. Weingarten.

MR. WEINGARTEN: Good morning, Your Honor. Your Honor, I think it can be fairly said that one of the more intersting aspects of the Mississippi investigation which has been a fascinating investigation has been the opportunity to get to know and to get to work with Wiley Fairchild.

People say that Wiley Fairchild is a brillant man, a shrewd businessman. We have found that there is truth to that. People say that Wiley Fairchild is a simple, naive and generous man, he can be led around by people who seek to take advantage of him. We have found that there is truth to that. People say that Wiley Fairchild is an amazingly generous man, he will give thousands, tens of thousands to good causes with no expectation whatsoever for anything in return. We have found that there is truth to that. And people say that Wiley Fairchil is a major political power broker in Mississippi who will r allow an election to go by without making a major impact all to suit his own purposes. We have found that there's truth to that. I guess what I'm saying, there is a complex contradictory picture of this man that emerges. If a book is ever written about the Mississippi investigation, and we are told that at least some are in the offering, at least two chapters should be devoted to Wiley Fairchild.

What is not contradictory, however, is Wiley Fairchild's role in the investigation. As the Court well knows about a year ago Mr. Fairchild was indicted and charged with two crimes, paying of gratuity and lying in the grand jury, perjury. As the Court well knows November last year Mr. Fairchild entered a plea, the gratuity count in this courtroom. Before the guilty plea Mr. Fairchild made a proffer to the United States. In our view it confirmed the validity of the indictment. He acknowledged giving a freebie, a gratuity, to Judge Nixon. He acknowledged lying in the grand jury. And he gave us some facts and the facts simply stated constituted the turning point of the investigation. Mr. Fairchild advised us that he was dissatisfied with the way his son was being treated in State Court. He advised us because of the oil well deal, the mineral interest deal he had with Judge Nixon he viewed Judge Nixon as owing him a favor. He acknowledged to us that he contacted Judge

Nixon and asked Judge Nixon to do something about his son's case and he advised us that in fact Judge Nixon interceded with the District Attorney, Bud Holmes. Again, that information simply stated was the turning point of our investigation. We believe we corroborated it and we believe that it in fact led to the indictments of Bud Holmes and Judge Nixon.

Since that proffer Wiley Fairchild has been fully cooperative. He made himself and his staff available to us at all times. He has testified in the grand jury with no hesitation. In advising the Court, in our view, he made every effort to be truthful in the grand jury and was prepared to testify at Mr. Holmes trial and we are advised that he is prepared to testify truthfully in any upcoming trial. It would be hard to overstate the value of Wiley Fairchild's cooperation in this investigation.

This cooperation in no way should trivilize the crimes he committed. The gratuity, Mr. Fairchild has likened it to a campaign contribution. He was in fact buying influence, good will to generate favors in the future. Analogyizing a federal Judge to a political candidate is frankly mindboggling to us. But I think perhaps Mr. Fairchild should get some benefit of the doubt, after all he is not a lawyer, not a well educated man and perhaps in his view public officials are public officials. Of course, in the view of an attorney an officer of the Court, it's an awful analogy to make.

The perjury, basically Mr. Fairchild's explanation to that is that he was advised not to tell the truth. It seems a prevailing theme in the Mississippi investigation there's a lack of respect for the oath. It seems that for a variety of reasons people have simply come into the grand jury in Mississippi and lied. It's our view that the oath is one of the pivots upon which the entire justice system turns and we pledge to do everythi in our power to see that the oath is respected.

What does all this mean in terms of sentence? We believe there is absolutely no threat in the world that Mr. Fairchild will repeat this conduct. We believe he is truely remorseful, he understand what he did and will not do it again. And we believe that Mr. Fairchild deserves credit for his help in this investig tion. At the bottom, in our view, we believe justice will be served without a jail sentence for Mr. Fairchild in this case. We do hope that any sentence imposed by the Court will underscore and affirm our abhorrence for the notion that judicial influence is a commodity to be purchased. A notion, frankly, that caused Mr. Fairchild to be in court today. Thank you.

THE COURT: Mr. Fairchild, I have given obviously a lot of thought to your sentencing. I had a lot of time, it has been continued several times. I have carefully reviewed all the material furnished to me which includes a rather extensive review of your background, your accomplishments which obviously are unique, and your concern for and generosity to others has been quite commendable.

I am aware of your conduct since your first appearance before the grand jury and your present state of health. I have read much of your testimony before the grand jury in connection with other cases. From this testimony I observed your change in attitude. I am not sure what motivated this change but it was obvious that a change did in fact occur. It is my observation that you may have very well have preceived the very nature of your prior actions and were seeking to make amends. I would hope that you realize the importance of our judicial system as it relates to the individual freedom which we enjoy in this country. Without it we would be a government of man rather than of laws which would most certainly have a negative impact on individual freedom affecting you, I, and everyone.

To act in a manner abusive of the system can only contribute to the destructio and consequent impairment of individual liberties.

Having said this, you can easily understand that this Court takes a dim view of your efforts to influence a judge in a manner prohibited by law, in the peformance of his official duties.

In the opinion of this Court there are three broad but extremely important factors which must be weighed at arriving at a decision as to what is an appropriate penalty to be imposed upon a person convicted of a crime. These are punishment, rehabilitation and deterrence. This Court is satisfied that your involvement and your realization of the seriousnes of your situation has since inflicted sufficient punishment upon you. This Court further feels that there is no likelihood that you will ever again permit yourself to be drawn into any similar situation even if it involves a family member, which it did in this case. I realize that. Therefore, your rehabilitation and personal deterrence are not factors to be dealt with in your sentence. However, deterrence of others through public perception is still a factor that must be considered. This Court has concluded that it would not be in the public interest to permit you to walk through the system. Taking into consideration all the circumstances and everything that has been said by everyone it is therefore the judgment of this Court and this Court does hereby sentence you to serve two years in custody of the attorney general and pay a fine of $10,000.0 Further this Court does hereby suspend one year and ten months of this sentence and place you on inactive probation for a period of three years to commence upon your release. It is the recommendat of this Court that you serve this two months in the custody or incarceration at the Halfway House in Jackson, Mississip You, of course, will be permitted to self-surrender. And it will be necessary that we fix a time at which you must surrender to commence this sentence. Counsel, do we have any suggestion as to the time? Consult with Mr. Fairchild. You make take a few minutes, if you like.

MR. HORNE: Your Honor, we have been advised by the Probation Officer that it would be best to make the facility in Jackson aware that he is coming so we would like five days.

THE COURT: You can have longer than that.

MR. HORNE: Frankly, Mr. Fairchil wanted to go in tomorrow night but we were advised they may need a little more notice than that.

THE COURT: What is the suggested date?

MR. HORNE: Monday.

THE COURT: Monday would be the twenty-third. It will be necessary for you to sign the self-reporting order, Mr. Fairchild, and your attorney.

(Mr. Fairchild and Mr. Horne comply)

THE COURT: What about the dismissal of the other counts?

MR. WEINGARTEN: We formally move to dismiss Counts, I think, two and three, the remaining counts of the indictment.

THE COURT: The motion is granted. Court stands adjourned.

(End of proceedings)

## REPORTER'S CERTIFICATE

I, Arlene Movahed, Official Court Reporter, for the United States District Court for the Eastern District of Louisiana, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth and I do further certify that the foregoing transcript has been prepared by me or under my direction.

Arlene Movahed

ARLENE MOVAHED
Official Court Reporter
United States District Court
Eastern District of Louisiana

EXHIBIT N - 19

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
JAN 13 1986
CLARENCE A. PIERCE, CLERK
BY ________ DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA *
*
VERSUS *
*
PAUL H. "BUD" HOLMES *
*
****************************

CRIMINAL ACTION
NO. H-85-00004

Transcript of Sentencing held in the above numbered and entitled cause before the Honorable Patrick E. Carr, presiding Judge on the 11th day of December, 1985.

APPEARANCES:

COUNSEL FOR THE UNITED STATES OF AMERICA:

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JAN LITTLE, Esq.
Public Integrity Section
U. S. Department of Justice
Washington, D.C. 20004-0168

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REPORTED BY: ARLENE MOVAHED, O.C.R.

# PROCEEDINGS

THE CLERK: Criminal Action H-85-04, United States versus Paul "Bud" Holmes.

THE COURT: Make your appearances.

MR. FANNING: Your Honor, Patrick Fanning along with Jim Dukes, Maurice Dantin and Bob Drake on behalf of Mr. Holmes who is present in the courtroom.

MR. WEINGARTEN: For the United States Reid Weingarten and Jan Little, Your Honor.

THE COURT: Is there any reason, counsel, why sentence should not be imposed at this time?

MR. FANNING: No, Your Honor.

THE COURT: Does the defendant have any reason why sentence should not be imposed?

MR. HOLMES: No.

THE COURT: Or the Government?

MR. WEINGARTEN: No, Your Honor.

THE COURT: Counsel, do you have anything to say on behalf of your client in mitigation of sentence?

MR. FANNING: Your Honor, if I may briefly. I furnished the Court with a sentencing memo.

THE COURT: I read it.

MR. FANNING: Mr. Dukes will have some

brief remarks to say on my behalf. The only thing I want to add that I failed to put in the sentencing memo is with regard to the section where I refer to Mr. Fairchild's sixty day halfway house sentence. I should have put in and called to the Court's attention the fact that Drew Fairchild who pled guilty to actually participating in smuggling of a load of marijuana into the Southern District of Mississippi was sentenced to that offense and was given a six month sentence. I know this Court's history on sentencing on drug cases and I don't think that would have been the case if this Court had sentenced him, however, I think in the interest of justice that Mr. Holmes' sentence should be imposed with some regard given to both Mr. Fairchild's Senior -- or Wiley Fairchild's sentence along with Drew Fairchild. That's all, Your Honor.

I refer to Mr. Dukes.

MR. DUKES: Your Honor, as the attorney, one of them for Mr. Holmes, and a person that has probably known him longer than anybody in this courtroom and considering the purpose of sentencing on occasions such as this I just want to say to the Court that I have seen this man since this entire matter arose suffer in anguish over not only the position that he is in but the remorse that he felt, the publicity that has been heaped upon his head and that of his family. If anybody has been punished, Bud Holmes has been punished as he stands before this Court today. He has suffered.

So far as rehabilitation, I think this Court is aware that and would believe that a sentence involving incarceration would not really accomplish anything so far as rehabilitation is concerned because I think that has been accomplished. He has certainly been punished and will be punished for the remainder of his life for the stigma that will rest with him. And so I simply ask on his behalf that the Court in its wisdom in passing sentence that you consider those things and that the Court in its wisdom be compassionate.

THE COURT: Mr. Holmes, would you like to say anything?

MR. HOLMES: Your Honor, it's my understanding from the counsel that they felt it would be best if they did the talking.

THE COURT: That doesn't preclude you from talking on your own behalf.

MR. HOLMES: Your Honor, I would like at this time with their indulgence to say that I apologize to the Grand Jury for my actions and I would like very much to apologize to the Court for my actions.

My family has been highly embarrassed by it which I regret, always will regret it. Certainly I have been very embarrassed about it. I do want to make the public apology.

THE COURT: Government want to say anything?

MR. WEINGARTEN: Yes, Your Honor. Good morning, Your Honor. Your Honor, when it comes to Mr. Holmes one could talk endlessly. He is a fascinating figure, he is a controversial figure, he is a colorful figure, he is a talented figure. Of course, we're not here to analyze him, we're here to sentence him and for that reason I think we should confine our remarks to the sentencing structure that the Court used in the Fairchild sentencing that Mr. Dukes eluded to and that is what is the purpose of sentencing and how does Mr. Holmes fit in, meaning what consideration should be given to rehabilitation, to punishment and to deterrence.

Before I get to that I will like to just briefly set the scene as the crime was committed in this case. Of course Mr. Holmes' conduct as District Attorney was of interest during the Grand Jury investigation and in particular his handling of the Drew Fairchild drug case. Mr. Bennaffons in his pre-sentence report focused on this issue, was Mr. Holmes a corrupt DA and did he handle the Drew Fairchild case corruptly. I think it's important to note and it is something that has always been emphasized by Mr. Holmes and his attorney that no bribe was paid to Mr. Holmes. There's no evidence whatever that Mr. Holmes ever took a dime while he was DA. We do have evidence, however, that

Mr. Holmes took an official action as DA in the Fairchild case based not on the merits but based on his relationship with people. In other words, friendship as opposed to the merits sometimes dictated Mr. Holmes' official conduct. While that is not illegal it could be considered improper. That I think is the difficult answer to Mr. Bud Holmes' question that he raises in the pre-sentence report. That of course is not what he was charged with and I don't think he should be sentenced according to his behavior as DA when it came to taking official action.

The crime, of course, took place in the Grand Jury. Mr. Holmes had been in the Grand Jury a couple of times and he had been asked about the Drew Fairchild case. Subsequent to his second visit to the Grand Jury the Government learned about a phone call that was made from Mr. Holmes' farm by Mr. Holmes and Judge Nixon to Wiley Fairchild that dealt with Drew Fairchild's case.

Mr. Holmes learned that we had come upon the evidence and he knew when he went back into the Grand Jury a third time that he was going to be asked about the phone call. He did three things that he pled to. One, he tried to find out exactly what we knew so as to be able to tailor his Grand Jury testimony. Two, he tried to trivulize the telephone call when he came back into the Grand Jury saying it never crossed my mind the first couple of times I was in the Grand Jury. And, third, he didn't tell the truth when he refused to tell the substance of the call. He pled to the crime of contempt, 18 U.S.C. 401. Of course it's a unique crime, it's not a felony, it's not a misdemeanor, it's an obstruction offense. Basically what he pled to was preventing the Grand Jury from getting evidence that it was entitled to receive.

Now as far as rehabilitation is concerned I tend to think Mr. Dukes is exactly right. I don't think any sentence imposed could further the process of rehabilitation. Mr. Holmes made a very moving apology in the Grand Jury the last time he appeared. I'm not able to crawl into Mr. Holmes' mind but I think it was sincere, I think he is sorry for what he did. Frankly, if he is not sorry and not sincere there is nothing that the Court could do, I think, that could further the rehabilitation process along but I tend to think it was sincere and I tend to think he is sorry and was sorry for what he did.

As far as punishment is concerned I also agree with Mr. Dukes. I believe Mr. Holmes has suffered by all accounts. He has been humiliated, he is withdrawn, a very glamorous high flying lifestyle is crashing around him. But the question is should he be punished more. I think it is important to consider this fact. It would be hard to find a perjury or false statement case or a contempt case where the mens rea was clearer. Mr. Holmes did know as he entered into the Grand Jury that he was going to be posed with this issue about the telephone call and I have to believe that he made his mind up before he went into the Grand Jury that he simply was not going to tell the truth to the Grand Jury. I think it would be hard to find a crime that more appropriately -- facts that more appropriately fit the crime. This does not mean that Mr. Holmes is contemptuous. To the contrary he has not been contemptuous to the Government at all. He has been a gentleman at every step of the way. Even when he was the defendant and there was a court process going along. I think that is important.

When I say the facts fit the crime, he was contemptuous, however, of the Grand Jury, of his oath and of the Court process when he made that fateful decision not to tell the truth. The question is why. Why did he do it? What was his motive. I think an absolutely peculiar thing about this is had Bud Holmes come into the Grand Jury and given the evidence that he was obliged to give he would not have had admitted to any federal offense on his part. So the question is why did he do it? Bud Holmes' explanation, and we have no reason to disbelieve him at this point, is he did it because of friendship for Judge Nixon. He did not want to disclose to the Grand Jury evidence that would have incriminated Judge Nixon.

Now, of course, the Greek philosphers rank friendship very very high on the list of

5F-AZ-13 PENGAD/INDY. MUNCIE IN 47302

virtues. However, in a legal system friendship must yield to the obligations to respect the oath, to respect the Grand Jury and to respect the Court. Frankly, Your Honor, Bud Holmes had his priorities mixed up, he respected the wrong master and frankly I don't think the Court can wink at this mistake.

Bud Holmes is not the only one of this investigation to have their priorities mixed up when they entered into the Grand Jury and this really brings us to the factor decision, the deterrence factor.

I think like in the Fairchild case this is the most important factor for the Court to consider. This Mississippi investigation has been marked by lack of respect for the oath. Witnesses have come into the Grand Jury with the agendas that did not include truth telling. Frankly, Your Honor, that is intolerable. The system can't work with that perspective from witnesses. Bud Holmes, a very very prominent individual in Mississippi, was one of those people. In a real sense the eyes of Mississippi and most particularly the eyes of the legal, the political and the law enforcement community are on this Court this morning. I think this is a wonderful opportunity for this Court to underscore the sanctity of the oath and to make crystal clear that no obligation comes before a citizen's duty to tell the truth.

On the other hand, of course, we have a flesh and blood human being who faces sentencing. I ask that the Court take this into account and it's our hope that this sentence imposed will also provide incentive to Mr. Holmes to use his considerable skills and abilities for public good in the future. Thank you.

THE COURT: You want to say anything?

MR. FANNING: Just briefly, Your Honor. I would have to say that I agree with much of what Mr. Weingarten said and I noted with particular interest his remarks about others taking the same position in the Grand Jury. It is true that others took the position in the Grand Jury and obviously did not tell the truth. Having reviewed much of the Grand Jury testimony which was given to us as Jencks Material in the case I noted with interest that it was my sincere belief on viewing the testimony and knowing the facts of the case that some of those people that disregarded the truth in the Grand Jury were not prosecuted for that and will not be sentenced, obviously, since they were not prosecuted.

Mr. Wiley Fairchild to my understanding was prosecuted for it and pled to it and pled to perjury and was given sixty days in the halfway house. I would close simply on saying, Your Honor, that the purpose of this sentence I don't think is punishment because Mr. Holmes has been punished. It's obviously not rehabilitation, we all agree on that. What it is is a deterrence from others from engaging in the same type of conduct and it's important, I believe, that the Court feel, and I would have to agree that the Court shows that our system of justice is not one that people are going to be able to go into the Grand Jury and take an oath and lie and walk out and escape. And I understand the Court's feelings in that regard. However, Your Honor, I would address myself simply to the fact that for Mr. Holmes in the position that he finds himself in being a member of the Bar and being a public figure such as he is suffering everything that he suffered any sentence of incarceration whatsoever is going to have a devastating effect on him. He will come out of the penitentiary being an ex-convict. He will have to face that stigma of people saying there is Bud Holmes who went to jail. Whether he gets sixty days or five years is not going to make that punishment anymore overwhelming from the standpoint of what the public views it to be. Of course, it has an effect on Mr. Holmes' personally as to when he can get back to beginning his life again and try and become a productive member of the community and get himself back on his feet financially in earning capacity.

But what I am trying to say, Your Honor, to the Court is if you sentence Mr. Holmes to incarceration I think that any term of incarceration has a devastating effect and would carry the message to the public that I think the Court may well feel a need to do.

I guess I am entitled

in this position to state my own opinion. I think he's suffered enough and ought to be given a suspended sentence. If the Court disagrees and you decide that you must impose a term of incarceration I would ask the Court be compassionate and to take into account my argument that I think that any term of incarceration would serve the need that the Court I think may feel needs to address itself. That's all, Your Honor.

THE COURT: I would tend to agree that there is no doubt of him being punished. Certainly his prior life doesn't indicate that he needs to be rehabilitated. Something that transcends the individual, all of us, we are all part of a system that is designed to serve our people. We have to serve it fair. If we don't, we contribute to its deterioration and destruction.

I take no personal pleasure in sending anyone to jail, particularly a man in Mr. Holmes' position. But I cannot give a suspended sentence. I might as well start at that.

The public preception in this case is extremely important, the deterrence of others. If I did what my emotions would dictate to me I would suspend this sentence but I can't reconcile that with the purpose.

In accordance with and pursuant to the plea agreement entered into, Mr. Holmes, I sentence you to serve one year in the custody of the Attorney

General, impose a fine of $10,000 and a special assessment -- that is applicable?

MR. FANNING: $50 special assessment?

THE COURT: Yes.

MR. FANNING: Judge, we're not going to argue with you about it if it is or isn't.

THE COURT: It's applicable. It's $50.

MR. FANNING: That's not anything we're going to appeal, Judge, if you impose it.

THE COURT: I assume that he needs time to report?

MR. FANNING: Your Honor, we would ask the Court if you would entertain all counsel in Chambers to discuss that matter, unless you want us to come to the bench?

THE COURT: You can come to the bench.

(Conference at the bench, off the record)

(Open court)

MR. FANNING: Judge, in connection with this matter we would first make a motion to the Court that the defendant be allowed to self-surrender at the designated place of incarceration Monday, the 17th of February.

THE COURT: Tuesday, the 18th.

MR. FANNING: Tuesday the 18th. Additionally, Your Honor, I would move the Court for a recommendation as to a place of incarceration and give the Court two institutions which we would ask the Court to designate. The first one being at Maxwell Air Force Base, the camp at Maxwell. In the event that Maxwell is to capacity, Your Honor, we would additionally ask the Court to recommend Eglin Air Force Base. Both of which are Level I institutions. Further request that the Bureau of Prisons be advised Mr. Holmes is formerly a law enforcement officer having been the DA and prosecutor in Forrest and Perry Counties, Mississippi, so they can take that into consideration when making their designation.

THE COURT: The motion will be granted and the Court will particularly request the Bureau of Prisons that he be incarcerated either at Maxwell Air Force Base or Eglin Air Force Base in Florida. Maxwell in Alabama. And if the Bureau is unable to do that the Court be so advised prior to a date of reporting, mainly February 18, 1986. And a particular reason for that being that the Court does not want the risk of incarcerating him in any area where he might have people who are serving time as a result of his activities during the time he was in law enforcement.

I will ask you to sign that agreement to report. There is no doubt in your mind that you can self report? I have to ask you that question.

MR. HOLMES: Me?

THE COURT: Yes.

MR. HOLMES: Yes, sir, no doubt.

(Mr. Holmes signed the document)

MR. HOLMES: Your Honor, I asked Mr. Fanning if it were appropriate for me on a personal note to thank this Court for being so understanding and the Court being so very dignified in conducting of the many many court courtesies it extended to me through the attorneys and that also I would like at this time to thank Mr. Weingarten and Miss Little. I know it has not been a pleasant task for them. I want to believe they take no personal delight in this but it's their job, it's what they're hired to do and I wouldn't respect them if they didn't handle it the way they do. I want to say this is the greatest country in the world and how fortunate we really are. The Lord has certainly been good to me. And I am standing right now and I feel like Lou Gehrig when he said I feel like I am the luckiest man in the world. Thank you, Judge.

MR. WEINGARTEN: We move to dismiss the indictment.

THE COURT: Motion is granted.
Court stands adjourned.

## REPORTER'S CERTIFICATE

I, Arlene Movahed, Official Court Reporter, for the United States District Court for the Eastern District of Louisiana, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth and I do further certify that the foregoing transcript has been prepared by me or under my direction.

Arlene Movahed

ARLENE MOVAHED
**Official Court Reporter**
**United States District Court**
**Eastern District of Louisiana**

EXHIBIT N - 20

## OTHER OIL AND GAS INVESTMENTS

## OF WALTER L. NIXON, JR.

| Corporation | Date of Investment | Amount of Investment | Income | |
|---|---|---|---|---|
| Pattison Petroleum Corp.<br>Clemens #1 | 5/8/81 | $4,062.50 | 1981 | -0- |
| | 8/12/81 | 2,187.50 | 1982 | $2,668 |
| | | $6,250.00 | 1983 | $2,206 |
| | | | 1984 | $ 982 |
| Chevron U.S.A., Inc.<br>Pointe Coupee Parish, LA | 2/26/81 | $9,814.50 | 1981 | -0- |
| | | | 1982 | -0- |
| | | | 1983 | $1,177 |
| | | | 1984 | $ 909 |
| GeoSouthern Corp.<br>Winnie #1 | 11/6/81 | $10,985.00 | 1981 | -0- |
| | SOLD 11/10/82 | | 1982 | $2,759 |

EXHIBIT N - 21

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
Hattiesburg Division

UNITED STATES OF AMERICA,
Plaintiff,
v.
WALTER L. NIXON, JR.
Defendant.

CR No. H85-00012 (L)

* * * * * * * * * * * * * * * * * *

## ORDER

This matter is before the Court on certain pretrial motions. Each motion will be addressed separately.

### DEFENDANT'S MOTION FOR A BILL OF PARTICULARS

In this motion, defendant Nixon seeks an order requiring the United States to file a bill of particulars responding to fourteen matters raised in the indictment. The purpose of a bill of particulars is to enable the defendant to prepare his defense, to avoid surprise at trial and to prevent double jeopardy. U.S. v. Harbin, 601 F.2d 773, 778 (5th Cir. 1979); U. S. v. Haas, 583 F.2d 216, 221 (5th Cir. 1978), cert. denied, 440 U.S. 981 (1979). It is not a discovery device, however, to acquire evidentiary information about the government's case. U. S. v. Davis, 582 F.2d 947, 951 (5th Cir. 1978), cert. denied, 441 U.S. 902 (1979); U.S. v. Kilrain, 566 F.2d 979, 985 (5th Cir. 1978). Whether to order a bill of particulars is within the discretion of the Court. U.S. v. Martino, 648 F.2d 367, 383 (5th Cir. 1981); U.S. v. Mackey, 551 F.2d 967, 970 (5th Cir. 1977).

1 - 3

In light of U.S. v. Evans, 572 F.2d 455 (5th Cir. 1978), defendant has narrowed his request in his supplemental brief on items 1, 2, and 3 to the following:

A. Both the government and the defendant should agree that the official and the official position in question are Judge Nixon and his federal judgeship. The government in its response has already answered that in the affirmative.

B. Both parties should agree that the gratuity at issue is the three mineral royalty interests conveyed by Wiley Fairchild. The government answered that in the affirmative.

C. The defendant requests specifics on the government's position that the expressions "official acts," "in the future," and "matters of interest to Wiley Fairchild" found in Count I are to be given their normal meaning. That is "official acts" means acts relating to Judge Nixon's position; "in the future" means at a time subsequent to Judge Nixon's receipt of the mineral interests; and "matters of interest to Wiley Fairchild" refers to matters affecting Fairchild's personal and business interests.

A careful reading of U.S. v. Evans at pages 479, 481 states:

> . . . More specifically, it is not necessary that the official actually engage in identifiable conduct or misconduct nor that any specific quid pro quo be contemplated by the parties nor even that the official actually be capable of providing some official act as quid pro quo at the time. . .
>
> • • •
>
> . . . The gravamen of each offense, then, is not an intent to be corrupted or influenced, but simply the acceptance of an unauthorized compensation. . .

* * *

> . . . Certainly, these statutes reach improper attempts to influence the future course of official conduct.

The defendant is not entitled to any further response on the first three items of his motion for a bill of particulars.

4 - 5

Requests four and five seek detailed disclosure of the government's evidence prior to trial and the government need not respond to them.

6

The government has answered.

7

The government has answered.

8 - 9

Requests eight and nine seek specific evidentiary matters and the government need not respond to them.

10

The government has answered sufficiently.

11

The government has answered.

12 - 13 - 14

Requests twelve, thirteen and fourteen request specific evidentiary matters and the government need not respond to them.

MOTION FOR DISCOVERY OF ELECTRONIC SURVEILLANCE

1

The government has responded that there were no Title III wiretaps in this case.

2

The government has responded that the tape recording of Judge Nixon which occurred during the April 9, 1984 interview has been turned over to the defense.

3

The government has responded that tapes made by the government and in the possession of the government relating to this case will be turned over pursuant to the Jencks Act and Brady v. Maryland, 373 U.S. 83 (1963).

### MOTION FOR PRETRIAL DISCLOSURE OF ALL EVIDENCE WHICH THE GOVERNMENT INTENDS TO OFFER PURSUANT TO RULE 404(B) OF THE FEDERAL RULES OF EVIDENCE

The government has responded that in its trial brief, it will outline generally the matters which it intends to introduce. The brief will be filed one week prior to trial.

### MOTION FOR DISCOVERY AND INSPECTION

1

Defendant has requested that the government turn over to him any copies of statements made by defendant. The government responds that this production has been made.

2

Defendant asks for any material, books, documents, etc. belonging to Walter L. Nixon. The government responds that this production has been made.

A. Defendant requests all files of any federal law enforcement agency relating to Drew Fairchild, Wiley Fairchild, Paul H. "Bud" Holmes, Carroll Ingram, John R. Stocks, A. Eugene Lewis, and W. P. "Pat" McMullan, Jr.

The government responds that it has produced all material which the defendant is entitled to pursuant to Rule 16 regarding Drew Fairchild, Wiley Fairchild, Bud Holmes and Carroll Ingram. The government states that it will produce other material regarding those individuals pursuant to the Jencks Act and Brady.

The government states that John Stocks, Gene Lewis, and Pat McMullan will not testify at trial and, accordingly, any material relating to these individuals need not be produced unless the government changes its position and decides to use them as witnesses. If there is any Brady material in the Government files relating to these three witnesses, it shall be turned over to the defendant.

B. Defendant requests all the documents in the files of Mississippi law enforcement agencies concerning Drew Fairchild, Wiley Fairchild, Paul H. "Bud" Holmes, Carroll Ingram, John R. Stocks, A. Eugene Lewis, and W. P. "Pat" McMullan, Jr. The government responds that it has turned over copies of records from these files. Glenn White, Forest County District Attorney, has advised that he will make available to the defense counsel all files in his office.

C. Defendant requests material concerning the three wells. The government responds that it has turned over all the material to the defendant which it has and will make available to defense counsel the remaining material.

3

Defendant requests copies of tests and experiments which the government has in its control. The government has submitted a polygraph examination report and internal memorandum to the Court for an in camera inspection. The defendant is not entitled to the internal memorandum. He is entitled to tests; however, polygraphs are not admissible in evidence and the Court would not require the government to submit polygraph tests. Nevertheless, the government has agreed to submit to the defense the polygraph report on one of the witnesses.

## MOTION FOR PRODUCTION OF EXCULPATORY AND IMPEACHING EVIDENCE

### 1

Defendant requests all statements of persons who have been interviewed by agents of the government whether or not it intends to call them as witnesses. The government has responded that it intends to comply with Brady and the Jencks Act with respect to this material. It is not required to disclose to defendant the entire file nor matters which are irrelevant to this case unless they contain Brady or Jencks Act material. Brady v. U.S., 373 U.S. 83 (1963); Giglio v. U.S., 405 U.S. 150 (1972); U. S. v. Agurs, 427 U.S. 97 (1976).

### 2 - 3 - 4

These requests are for specific evidentiary material and unless there is Brady or Jencks Act material, these materials need not be furnished to defendant.

### 5

Defendant requests documents relating to Drew Fairchild, Wiley Fairchild, Paul H. "Bud" Holmes, Carroll Ingram, John R. Stocks, A. Eugene Lewis, and W. P. "Pat" McMullan, Jr. Documents relating to those individuals who will not be called as witnesses need not be produced unless they contain Brady material. Documents relating to those individuals who will be witnesses shall be produced pursuant to the Jencks Act and Brady v. Maryland.

6

Defendant requests any information concerning grants of immunity to any person. This the government shall supply.

7

Defendant requests any personal or business documents belonging to defendant Nixon. The government has already complied with this request.

8

Defendant requests any reports or documents relating to the conduct of Walter L. Nixon. The government has complied with this request insofar as it relates to the instant case. Investigations of defendant in any other matters which do not have to do with this case will not be offered in evidence by the government and need not be produced by the government.

9

Defendant requests the rap sheet of any person who will be called as a witness by the government. The government shall supply this to the defendant.

10

Defendant requests any acts of misconduct known to the government about any of the witnesses it may use. The government declines to answer. The Court is of the opinion that if the government knows of any specific acts which are probative of untruthfulness of any of its witnesses, that information shall be furnished to the defendant. Rule 608(b), F.R.Evid.

11

Defendant requests information about formal or informal grants of immunity or the placement in the Witness Protection Program or anything else that has been given or promised to any of the government's witnesses. The government shall supply such information to the defendant.

12

Defendant requests information about any agreements with John Stocks or Eugene Lewis and any investigation of Carroll Ingram. The government declines to disclose anything concerning Stocks or Lewis for the reason that they are not going to be witnesses. The Court agrees unless there is Brady material. The government responds that it has turned over a letter to Ingram's attorney written by the government which contains the government's position with regard to Carroll Ingram.

13 - 15

These requests are not covered by Brady and the government has agreed that it will provide Jencks Act material one week before trial for any witnesses whom it plans to use.

16

Defendant requests exculpatory information relating to Skip Jarvis. The government responds that it knows of none.

17

Defendant requests all state and local files for witnesses who were or are law enforcement officers. The government responds that it will make an ex parte submission of the material to the Court.

18

Defendant requests specific information concerning the oil and gas investments of Walter L. Nixon. The government responds that it has already turned over all the information it has and any additional information will be found in the Jencks Act material which will be disclosed one week prior to trial.

19 - 20

Defendant requests all records and information which would be impeaching of the government's evidence, including witnesses and non-witnesses. The government responds that it knows of no such evidence except that which has been and will be turned over by provisions of Brady and Jencks.

BRADY MATERIAL

There appears to be some dispute between the parties with respect to the timing of disclosure of Brady material contained in Jencks Act material. To resolve this issue, the Court orders that the government produce to defendant as soon as possible any material presently known by the government to be exculpatory.

DATED this 24th day of December, 1985.

UNITED STATES DISTRICT JUDGE

EXHIBIT N - 22

EXHIBIT N - 23

STATEMENT OF
UNITED STATES DISTRICT JUDGE
WALTER L. NIXON, JR.

Final Copy

FOR RELEASE 12 NOON
JANUARY 20, 1988

Ladies and gentlemen, now that the appellate process is completed, I feel it incumbent upon me to make a public statement concerning my case.

The focus of this federal investigation, as it related to me, was whether I had violated any law; more specifically, whether I committed any criminal act in my capacity as a Federal Judge. After the Special Federal Grand Jury was convened to investigate this matter, I requested the right to appear, and did voluntarily appear and testify before that Grand Jury.

Despite the fact that the federal prosecutor later conceded in his final gument to the jury at my trial--and even in public statements made since the trial--that the evidence did not support the charge, he nevertheless secured an indictment from the Grand Jury charging me with receiving an illegal gratuity in exchange for an official act as a Federal Judge. The prosecutor also secured, in the same indictment, three additional counts charging me with perjury based on statements made by me during my Grand Jury testimony, declaring my innocence.

The trial jury found me innocent of the corruption charge and one perjury charge. Ironically, I was found guilty of two of the perjury counts based on statements I made to the Grand Jury supporting my innocence of the corruption charge. Without dispute, I was found not guilty of any illegal or unlawful act in my capacity as a Federal Judge or of any abuse or misuse of my office.

I have committed no crime, and I will continue to seek justice.

The Constitution of the United States provides, in the case of the deral Judiciary, an additional forum where all the evidence relating to the conduct of a Federal Judge may be examined by the Congress of the United States, if they deem it necessary, before a Judge may be removed from office. The right of a Federal Judge to have his case heard in impeachment proceedings is embodied in the original Constitution and is just as precious as any other rights granted therein, including the rights of freedom of speech, including a free press embodied in the First Amendment later added to the Constitution.

The appellate review of the jury decision in my case has necessarily been limited to the evidence produced at trial. Since my trial, evidence has come to light which bears on the federal prosecutors' motivation for pursuing these charges, as well as the manner in which they were pursued.

Our Federal Courts and the Federal Judges who preside over these courts should be able to decide issues--great or small, civil or criminal--when those issues arise between the United States Government and its citizens, without fear of reprisal, pressure or vindictive prosecution to influence or avenge the decisions of a Federal Judge. This type of action on the part of federal prosecutors against Federal Judges has a "chilling effect" upon the entire Federal Judiciary who occupy the trial bench of this country and should be examined thoroughly by the Congress, if impeachment proceedings are instituted. This "chilling effect" should be the concern of every citizen who finds himself in a legal controversy or dispute with the government of the nited States.

. If impeachment proceedings are instituted, I intend to seek, in that forum provided by the United States Constitution, a full and fair hearing of all the evidence which precipitated these charges, as well as the motivation of the prosecutors. Congress has the right and the responsibility to consider all the circumstances surrounding my case to determine whether I have been treated unfairly and unjustifiably prosecuted. My resignation would foreclose that right. Therefore, I shall not resign!

My family and I wish to publicly thank the many people who have expressed support for us and belief in my innocence. We ask for your prayers in our continued pursuit of justice.

EXHIBIT N - 24

## DECLARATION OF WILEY FAIRCHILD

Wiley Fairchild of Hattiesburg, Mississippi hereby makes the following declaration:

1. I attended negotiations with federal prosecutor Reid Weingarten in November 1984 concerning a plea agreement with respect to a federal indictment against me for one count of perjury and one count of giving an illegal gratuity. The plea agreement called for the government to dismiss the perjury charge and for me to plead guilty to the gratuity charge. Under the final agreement, as I understood it, Mr. Weingarten said that the gratuity charge would be dropped if he later became convinced that there was no connection between my oil investment with Judge Walter Nixon and the handling of the drug charges against my son, Drew.

2. Mr. Weingarten also stated on several occasions in early 1985 that he would do what he could to help my son, Drew.

3. Although I did not believe I had committed a crime -- and even though Judge Nixon's investment had nothing to do with Drew's case -- I pleaded guilty because I was afraid of going to jail and because my lawyer told me that if I was convicted they would put me in handcuffs and then take me straight to jail that instant.

4. Before my sentencing hearing in New Orleans in September 1985, my attorney, Wallace Dunn, related to me what Mr. Weingarten had advised that I should say at the hearing. Mr. Weingarten stated that I should tell the court that I had made a mistake and was sorry. I was afraid not to say in Court what Mr. Weingarten said I should say.

5. I met with Mr. Weingarten on several occasions between September 1984 and my testimony at Judge Nixon's trial in January 1986. At those meetings we discussed my testimony against Judge Nixon. Mr. Weingarten told me on several occasions that he needed a "smoking gun" to use against Judge Nixon.

6. Based on Mr. Weingarten's statements at the time of my plea agreement and based on our course of dealing in 1984 and 1985, I was led by Mr. Weingarten to believe that if my testimony at Judge Nixon's trial satisfied him, Mr. Weingarten would do everything he could to help me, including assisting in getting a pardon. I also had the distinct impression that if my testimony at the Nixon trial did not please Mr. Weingarten he would not help me.

I declare under the penalty of perjury that the foregoing is true and correct.

DATE: 4 March, 1988
8 45 PM

Wiley Fairchild
WILEY FAIRCHILD

EXHIBIT N - 25

State·Metro

DEATHS – 2
STOCKS – 5-6
BUSINESS – 8
B

The Clarion-Ledger Jackson DAILY NEWS

February 7, 1987 • Saturday

# Judge Nixon prosecutor: Case may curb grand jury cooperation

By JERRY MITCHELL
Clarion-Ledger Northeast Mississippi Bureau

OXFORD – The February 1986 conviction of U.S. District Court Judge Walter L. Nixon Jr. on perjury charges has had a chilling effect on people cooperating with federal grand jury investigations, the lawyer who prosecuted Nixon said Friday.

Reid Weingarten of the Public Integrity Division of the U.S. Department of Justice told a University of Mississippi law school class that the Nixon case will curtail the number of people willing to give voluntary grand jury testimony.

"I'm certain it will happen," said Weingarten. "It's happened already."

Nixon became the second sitting federal judge in the 198-year history of the federal judiciary to be found guilty of crimes committed while in office.

He was convicted Feb. 9, 1986, of two counts of giving perjured testimony during a July 1984 voluntary appearance before a special federal grand jury investigating public corruption in south Mississippi.

Nixon has appealed the conviction and the 5th U.S. Circuit Court of Appeals heard arguments in the case Dec. 4. The appeals court has not rendered a decision.

Nixon has voluntarily relinquished his judicial and administrative powers and continues to draw his $76,000 salary.

Nixon appeared before the grand jury without immunity, Weingarten said, and some defense attorneys may advise clients to not cooperate because their testimony can be used against them.

The trappings of his office may have caused Nixon to feel it was "more important to maintain his position" than to be honest with the grand jury, the federal prosecutor said.

Weingarten, 36, said the Nixon investigation involved "good ol' boy politics."

Nixon was convicted of lying to the grand jury when he denied discussing a drug case pending against Drew Fairchild, son of Hattiesburg businessman Wiley Fairchild, with Bud Holmes, former district attorney for Forrest County, and when he denied attempting to influence the case.

Holmes, the chief prosecution witness against Nixon, was indicted on obstruction of justice and perjury charges stemming from the grand jury investigation. He pleaded guilty to a reduced misdemeanor charge of misconduct before a federal grand jury and was fined $10,000 and sentenced to a one-year jail term. Holmes is appealing the jail portion of his sentence before the 5th U.S. Circuit Court of Appeals.

Weingarten said the way Holmes manipulated the younger Fairchild's case was "almost breathtaking."

Holmes testified that he indicted the younger Fairchild in order to help his friend, Bill Porter of Hattiesburg, collect legal fees for representing Drew Fairchild in federal court.

"That chilled my blood," Weingarten said.

Holmes testified during Nixon's trial that he passed the drug case to the inactive files to please Nixon, although the judge did not ask him to take any action.

Looking back on the trial, Weingarten said he had no quarrel with the jury for acquitting Nixon on charges of accepting an illegal gift because the case was not proven.

The government charged Nixon with accepting oil and gas royalty interests from Wiley Fairchild in exchange for the judge's help in the younger Fairchild's drug case. Testimony showed the interests were transferred before the younger Fairchild was arrested and the jury found nothing improper with the transaction.

The most serious cases he prosecutes are against federal judges, said Weingarten, who also prosecuted U.S. District Judge Alcee Hastings of Miami who was acquitted of federal bribery charges.

"There's this mystical feeling that federal courts should be spotlessly clean." When a federal judge is charged, he said, "no one celebrates."

Weingarten downplayed the importance of the case against Nixon, saying it had been exaggerated by the media.

"I was dismayed at the conception ... that this was the biggest trial in Mississippi" since civil rights trials of the 1960s, he said. "I never had that sense."

# DECLARATION OF JOHN D. BALTAR

John D. Baltar of Hattiesburg, Mississippi hereby makes the following declaration:

1. I am administrative assistant to Mr. Wiley Fairchild of Fairchild Construction Co. in Hattiesburg, and worked in that capacity from 1984 through 1986, when Mr. Fairchild was investigated by and prosecuted by the federal government. At Mr. Fairchild's request, I attended a number of meetings with federal prosecutors and agents during that time and assisted those officials in several ways.

2. My first involvement with the federal investigation was in April 1984, when Mr. Fairchild asked me to contact George Phillips, the United States Attorney for the District of Mississippi, concerning Mr. Fairchild's belief then that he was the object of blackmail by the Forrest County District Attorney, Paul Holmes. When I spoke to Mr. Phillips, he referred me to Weldon Kennedy of the Federal Bureau of Investigation, who arranged to have FBI agents interview Mr. Fairchild the following morning. I later learned that the FBI had wanted to interview Mr. Fairchild for some time, but was unsure as to how to approach him.

3. In several conversations with Mr. Fairchild, during which I was present, federal prosecutor Reid Weingarten stated that if Mr. Fairchild could give him a "smoking gun" that would convict Judge Nixon, Mr. Fairchild would not be indicted.

4. In November 1984, I was at the Federal Building in Jackson with Mr. Fairchild while Mr. Fairchild's attorney, Barry Hess of Mobile, Alabama, met with federal prosecutor Reid Weingarten concerning a possible plea agreement on a two-count federal indictment against Mr. Fairchild that had been returned in September 1984. Mr. Hess advised Mr. Fairchild and me that Mr. Weingarten was willing to dismiss the perjury count of the indictment and accept a plea of guilty to a charge of paying an illegal gratuity to Judge Nixon. Mr. Hess reported that Mr. Weingarten promised that the government would not seek any incarceration of Mr. Fairchild. Mr. Hess also reported that Mr. Weingarten stated that he would drop the gratuity charge if it turned out that there was no connection between the prosecution of Drew Fairchild on drug charges and Judge Nixon's investment in oil and gas properties. Mr. Hess reported that Mr. Weingarten was not willing to put the last statement -- that he would drop the gratuity charges against Mr. Fairchild if he became convinced there was no connection between Drew's case and Judge Nixon's investment -- in the plea agreement letter.

5. In meetings with Mr. Fairchild and me in early 1985, Mr. Weingarten promised to do what he could to help Mr. Fairchild's son, Drew.

6. In the spring of 1985, it was reported that County Judge Dickie McKenzie, before whom Drew Fairchild's prosecution was pending, had stated that he would sentence Drew Fairchild to five years in prison on the pending drug charges. I immediately

brought Drew Fairchild to Mr. Hess's office, and Mr. Hess contacted Reid Weingarten by telephone to try to make a better deal for Drew. It is my understanding that during that conversation Mr. Weingarten agreed to prosecute Drew Fairchild in a federal proceeding on the drug charges to head off the state prosecution. I also understood that Mr. Weingarten agreed to intercede with the then-District Attorney in Forrest County, Glenn White, to seek an agreement that the state authorities would accept the time served on federal charges as full satisfaction of any state charges against Drew Fairchild.

7. I understood that Mr. Weingarten did reach an agreement with state authorities to have any federal prison time satisfy the state authorities, and that he wrote a letter to the state authorities to assist Drew Fairchild in the state prosecution.

8. In the course of my conversations with Mr. Weingarten, I mentioned that, on behalf of Mr. Fairchild, I and several others had organized a telephone survey of 720 residents of the 11 counties from which jurors are drawn for juries in federal trials in Hattiesburg. The survey was designed to identify the personal characteristics of those individuals who would be most inclined to support either the government or Mr. Fairchild, had Mr. Fairchild's case had gone to trial.

9. At Mr. Fairchild's request, I made the results and methodology of that survey available to Mr. Weingarten before the

trial of Judge Nixon, and Mr. Weingarten reviewed those materials.

10. Immediately before Judge Nixon's trial, and with Mr. Fairchild's approval, I assisted Mr. Weingarten in researching the backgrounds of some potential jurors for that trial. To help with this effort, I went down to the Federal Building in Hattiesburg and reviewed the list of potential jurors, providing to Mr. Weingarten any information I knew about the potential jurors and the areas where they lived. I also made several telephone calls to friends and acquaintances to seek further background information on the potential jurors, and conveyed that information to Mr. Weingarten.

11. On a Saturday or Sunday morning during the trial, I picked up Mr. Weingarten at the Howard Johnson's Motel in Hattiesburg and drove him to the offices of Fairchild Construction Company. At a meeting with Mr. Fairchild, Mr. Weingarten then reviewed with Mr. Fairchild the presentation to be made by Mr. Fairchild as a government witness during the trial. During this meeting, Mr. Weingarten reviewed the points he wanted to emphasize in Mr. Fairchild's testimony, and told Mr. Fairchild that he did not want to get into other matters. Based on Mr. Weingarten's notes, I wrote down during that meeting a list of questions and answers that would be covered during Mr. Fairchild's testimony and those were reviewed by all three of us -- Mr. Weingarten, Mr. Fairchld and myself. I then had that list of questions and answers typed up so Mr. Fairchild could

study them before his appearance as a witness. Mr. Weingarten requested that Mr. Fairchild study the information in Attachment 1 ~~2~~ before appearing as a witness. I observed Mr. Fairchild studying those materials, including while he waited in the jury room at the federal courthouse on the day he testified in Judge Nixon's trial. That material is attached to this Declaration as Attachment 1.

12. After Judge Nixon's trial was concluded, Mr. Fairchild asked me to contact Mr. Weingarten to ask if Mr. Weingarten would assist in an application by Mr. Fairchild for a presidential pardon. I reached Mr. Weingarten by telephone at his office in Washington and made that request. Mr. Weingarten replied that he would be willing to help Mr. Fairchild in any way he could, but would not do so until the Judge Nixon matter was completely concluded.

I declare under penalty of perjury that the foregoing is true and correct.

DATE: 3/4/88

John D. Baltar
JOHN D. BALTAR

RELATIONSHIP WITH DREW

RELATION WITH CARROLL

RELATIONSHIP WITH BUD

DREW'S CASE:

THE BUST

READ IN PAPER, NOT HAPPY THAT DOPE WAS BEING BOUGHT INTO HATTIESBURG. LATER FOUND OUT THAT DREW HAD BEEN INVOLVED AND WAS VERY DISGUSTED WITH HIM. PREVIOUSLY HAD NOT GOTTEN ALONG WITH DREW BUT HE IS MY SON AND I DID NOT WANT HIM TO GO TO PRISON. DREW TOLD ME THAT HE AND BILL PORTER WAS GOING TO SEE GEORGE PHILLIPS. DREW LATER SHOWED ME THE PAPERS OF HIS PLEA BARGIN. $2,500.00 GIVEN TO BILL PORTER.

I GOT A TELEPHONE CALL FROM BUD ABOUT 5:00 ONE NIGHT, THAT DREW HAD BEEN INDICTED AND TO GET DREW TO GET BILL PORTER, CARROLL INGRAM OR WHO AND HE WOULD RELEASE DREW ON HIS OWN RECOGNIZANCE. $7,500.00 GIVEN TO BILL PORTER AND HE SAID THAT WOULD TAKE CARE OF EVERYTHING.

BOB ROYALS CAME AND ASKED ME TO GET OFF MY MONEY. MADE ME REAL MAD. I WAS ANGERED OVER AN ACCUMULATION OF DELAYS AND PEOPLE TRYING TO BLACKMAIL ME. I TRIED TO CALL CARROLL TO GET THE JUDGE UP HERE AND WAS UNABLE TO GET CARROLL. I CALLED THE JUDGE DIRECT AND TOLD HIM I WANTED TO DISCUSS SOMETHING WITH HIM BUT NOT OVER THE PHONE.

WHY DID I CALL NIXON?
BECAUSE I THOUGHT HE OWED ME A FAVOR. WHEN THE JUDGE HAD COME BY TO THANK ME FOR PUTTING HIM IN THE OIL DEAL. THE JUDGE SAID "WILEY, IF I CAN EVER HELP YOU, I WILL. IF I CAN'T, I WILL TELL YOU." I CALLED HIM AND ASKED HIM TO COME BY AND HE DID.

HOW LONG WERE THE OIL PAPERS BACKDATED?
I YEAR EXACTLY

WERE YOU PROSECUTED BY THE JUSTICE DEPARTMENT?
YES

WHY?
I MADE A MISTAKE. I TREATED NIXON AS I HAD OTHERS BEFORE. I DID NOT WANT TO DO WRONG. I DID NOT KNOW IT WAS A CRIMINAL OFFENSE TO HELP A JUDGE.

HAVE YOU MADE A DEAL TO TESTIFY IN THIS CASE?
NO

WHEN DID NIXON COME UP AFTER THE PHONE CALL TO HIM FROM YOU?
HE CAME UP WITHIN A FEW DAYS.

DID YOU EVER HEAR FROM NIXON AFTER HIS VISIT?
YES. THAT NIGHT NIXON CALLED AND SAID "WILEY, YOU REMEMBER THAT MAN WE WERE TALKING ABOUT THIS AFTERNOON. WELL, I AM AT HIS HOUSE AND HE SAYS EVERYTHING WILL BE ALL RIGHT." THEN BUD GOT ON THE PHONE AND SAID "WILEY", WHEN THIS MAN ASK ME TO DO SOMETH I DO IT." I THANKED HIM FOR CALLING AND SAID I WOULD SLEEP ALOT BETTER THAT NIGHT.

DID YOU TELL ANYBODY ABOUT THAT CALL?
YES. I TOLD CARROLL INGRAM.

WHAT HAPPENED NEXT?
DREW'S CASE WAS PASSED TO THE FILES. CARROLL BOUGHT ME THE PAPERS OUT AND SAID "MERRY CHRISTMAS". I WAS SO EXCITED THAT AT LAST IT WAS ALL OVER. I CALLED DREW'S WIFE AND SHE CAME OUT AND I GAVE HER A COPY.

HOW DID THE CASE GET BACK ON THE DOCKET?
WHEN JUDGE McKENZIE CAME IN AND TOOK JACK WELDY'S PLACE.

DID YOU EVER SEE JUDGE McKENZIE?
YES, I CAME IN ONE MORNING AND THEY TOLD ME THAT BUD HOLMES HAD CALLED. THEY TOLD HIM THAT I SHOULD BE IN SHORTLY. I TOLD THEM IF HE CALLED BACK THAT I WAS NOT HERE BUT THEY SAID HE WAS COMING OUT, SO I TOLD THEM TO GO AHEAD AND CALL ME WHEN HE GOT HERE AND IN A FEW MINUTES BUD AND JUDGE McKENZIE CAME, SO I GOT RODNEY TO COME IN THE OFFICE WITH US. BUD SAID "WILEY, NOBODY IS AFTER DREW. NOTHING IS GOING TO HAPPEN TO HIM. GET AHOLD OF DREW AND TELL HIM TO JUST LET IT SLIDE. DO NOT LET THE PRESS GET AHOLD OF THIS CAUSE THEY WILL JUST SCREW THINGS UP." BUD SAID JUST LET IT SLIDE. "JUDGE McKENZIE COULD GIVE DREW 20 YEARS BUT ME AND THE JUDGE GET ALONG REAL WELL. NOTHING IS GOING TO HAPPEN TO DREW."

WHAT DID JUDGE McKENZIE SAY?
HE DID NOT SAY ANYTHING, HE JUST SAT THERE AND NODDED, LIKE HE AGREED.

CROSS EXAMINATION:

WHY DID YOU CARE WHAT WOULD HAPPEN TO DREW?
BECAUSE I'M PROUD OF THE FAIRCHILD NAME, AND HE'S MY SON.

DID YOU TALK WITH MR. WEINGARTEN ABOUT TESTIFYING?
YES

WHAT DID HE TELL YOU TO SAY?
HE TOLD ME TO JUST TELL THE TRUTH, AND THAT'S WHAT I'M DOING.

WHY WERE YOU INDICTED?
BECAUSE MY LAWYER ADVISED ME NOT TO HELP THE FEDS INVESTIGATION AND KARL

KIFFER TOLD ME THEY COULD NOT USE MY TESTIMONY AGAINST ME.

EXHIBIT N - 26

## DECLARATION OF PAUL HOLMES

Paul H. ("Bud") Holmes of Hattiesburg, Mississippi, hereby makes the following statement.

1. As I testified during the trial in United States v. Walter Nixon in Hattiesburg, I spoke with Walter Nixon in May 1982, at a time when I was District Attorney for Forrest County. Nixon mentioned in passing that Wiley Fairchild had asked Nixon to put in a good word for Wiley's son, Drew, who was awaiting sentencing on a guilty plea he had entered to an indictment brought by my office.

2. Nixon made absolutely clear to me that he was not seeking any preferential treatment or special favors for Drew Fairchild. I understood that Nixon simply was passing on to me the information that Wiley Fairchild had been asking about his son's case. I would have expected any friend of mine to mention to me that a member of the community had been asking about a case for which I was responsible.

3. I was not influenced in any way in my handling of the Drew Fairchild matter by this brief exchange with Nixon. My office took no action -- nor failed to take any action -- with respect to the Drew Fairchild matter because of that brief exchange I had with Nixon.

4. In my telephone conversation with Wiley Fairchild that evening, I did try to give credit to Nixon for helping out with Drew Fairchild's case. Such remarks, in my experience, are

not unusual for a prosecutor or any public official to make. It was my practice as District Attorney to make up my own mind as to the public interest on any law enforcement or prosecutorial decision. Having decided myself which course should be followed, it was not unusual for me, out of friendship, to accord credit to others for having influenced my decision.

5. On March 27, 1985, I and my attorney, Maurice Dantin, met with federal prosecutor Reid Weingarten. Weingarten informed me that I was likely to be indicted that week but that I "did not have to be indicted" if only I would fill in some gaps in Weingarten's investigation. Weingarten said that I was a "savvy" guy, and would understand what he meant.

6. Based on my experience as a prosecutor and my experience with Weingarten's investigation, I understood perfectly that I could avoid indictment if I provided incriminating testimony about Judge Walter Nixon. Because I have never know of -- or even heard a rumor of -- any corrupt or dishonest act by Walter Nixon, I could not take the deal that was offered by Weingarten.

7. After I entered into an agreement with the federal government to plead guilty to a single misdemeanor for contempt of court, federal prosecutor Weingarten stated to me that he doubted he could have convicted me on several of the counts of the indictment against me.

8. Also after my plea agreement was reached, federal prosecutors and agents questioned me to attempt to establish a connection through me between Walter Nixon and the owners of Petit Bois Island, John Stocks and Eugene Lewis. I explained to the prosecutors and agents that I knew of no connection whatever between Nixon and those two gentlemen.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 29, 1988

Paul H. Holmes

# EXHIBIT N - 27

## DECLARATION OF MAURICE DANTIN

Maurice Dantin of Columbia, Mississippi, hereby makes the following declaration:

1. In 1985, I served as defense counsel for Paul ("Bud") Holmes in United States v. Holmes, CR. No. H85-00004 (S.D. Miss.).

2. On March 27, 1985, I attended a meeting with my client and federal prosecutor Reid Weingarten. Weingarten informed us at that meeting that Holmes was scheduled for indictment by a federal grand jury in Hattiesburg that week. Weingarten added that Holmes "did not have to be indicted" if he would fill in some gaps in the grand jury investigation. Weingarten said that Holmes is a "savvy guy" who would understand what Weingarten meant.

3. Based on my experience as a prosecutor and on my knowledge of the investigation of Holmes by the federal grand jury in Hattiesburg, I understood that Weingarten was offering not to indict Holmes if Holmes would provide incriminating information about Judge Walter Nixon. Nixon plainly had been the target of the grand jury investigation all along.

4. Because Holmes had in his possession no incriminating information about Nixon, he was unable to take the deal offered by Weingarten.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 24 FEBRUARY 1988

Maurice Dantin

Maurice Dantin

EXHIBIT N - 28

## DECLARATION OF MICHAEL S. FAWER

Michael S. Fawer of New Orleans, Louisiana, hereby makes the following declaration:

1. I was principal trial counsel for Walter L. Nixon, Jr. in United States v. Nixon, Crim. No. H85-00012(L) (S.D. Miss.), for the pretrial and trial stages of the case in Hattiesburg, Miss.

2. During the pretrial stage, we filed a defense request for all materials in the possession of the government to which we were entitled under the Jencks Act and Brady v. Maryland. That motion was granted by the Court. Nevertheless, the government never provided to us any information on the following points:

(a) That the prosecutor had told Wiley Fairchild at the time of the plea agreement that he would drop the gratuity charge against Wiley if he became convinced that the oil investment involving Judge Nixon and Wiley had nothing to do with the handling of the drug charges against Wiley's son, Drew Fairchild.

(b) That the prosecutor promised Wiley that he would do everything he could to help Drew.

(c) That the prosecutor told Wiley's lawyer what Wiley should say at his sentencing hearing and that Wiley was too afraid not to say what the prosecutor told him to say.

(d) That Wiley had approved having his employee, John Baltar, assist the federal prosecutors in selecting the jury for the Nixon trial.

(e) That the prosecutor and Wiley jointly developed a written list of questions and answers for Wiley's trial testimony and that the prosecutor requested Wiley to study that material in preparation for his testimony.

3. Had I known the information listed in Paragraph 2 above, I would have used the information to impeach the credibility of Wiley Fairchild and, equally important, to attack the credibility of the prosecution itself.

I declare under penalty of perjury that the foregoing is true and correct.

Michael S. Fawer
Michael S. Fawer

Date: 3/7/88

EXHIBIT N - 29

## Affidavit of Barry Hess

Barry Hess of Mobile, Alabama, hereby makes the following declarations:

1. I was an attorney for Wiley Fairchild in the Federal criminal case in which he pled guilty to having given an illegal gratuity to Federal District Court Judge Walter Nixon, Jr. This representation began shortly after Mr. Fairchild's indictment in September 1984, and lasted through Mr. Fairchild's sentencing in September 1985.

2. During plea negotiations with Reid Weingarten of the United States Department of Justice, which occured approximately six weeks after Mr. Fairchild's indictment, we worked the details of Mr. Fairchild's plea agreement which called for Mr. Fairchild to plead guilty to one count of having given an illegal gratuity to Judge Nixon. The terms of the agreement were reflected in the letter that was presented to the court at the time of the plea. After the details had been agreed upon, Mr. Weingarten told me, as an aside, that if the evidence ultimately showed that no gratuity had been paid, he would dismiss the charge against Mr. Fairchild. Mr. Weingarten may have further stated that in view of Mr. Fairchild's grand jury testimony on the subject it was highly unlikely that the dismissal would occur.

3. Following this meeting I told Mr. Fairchild and John Baltar of Mr. Weingarten's comment about dismissing the gratuity

charge. I explained to both of them that it was not part of the plea agreement, Mr. Farichild had no right to the dismissal based on anything he did for the government, and that it was to be an independent decision for Mr. Weingarten to make based on the evidence in the case.

4. At no time during the time that I represented Mr. Fairchild do I recall hearing Mr. Weingarten or any other representative of the government promise Mr. Fairchild that the Federal government would take care of Drew Fairchild's State of Mississippi criminal drug case. This subject was never part of the plea agreement between the United States and Wiley Fairchild.

5. I also represented Drew Fairchild on his State and Federal drug charges including negotiating his guilty pleas with both governments in 1985. Neither Mr. Weingarten nor any other representative of the Federal government had any involvement in the negotiation of the State plea agreement and no State officials had any involvement in the negotiation of the Federal plea agreement.

Under penalty of perjury I declare the the foregoing is true to the best of my knowledge.

Barry Hess

DATE: 5/12/88

# EXHIBIT N - 30

## Affidavit of Reid H. Weingarten

Reid H. Weingarten of Washington, D.C., hereby hereby makes the following declarations:

1. I was the lead counsel for the United States in United States v. Nixon, Criminal No. H85 00012(L) (Southern District of Mississippi) for the investigative, pre-trial, and trial stages of the case.

2. I never promised or represented to Wiley Fairchild or his counsel that I would dismiss the gratuity charge against him if I became satisfied that the mineral royalty interests given by Fairchild to Judge Walter Nixon were unrelated to Drew Fairchild's drug case. I did advise both Fairchild and his attorneys that I would move to dismiss any unsupportable charge in any case, but this was not said as a promise or inducement in connection with any plea bargain with Fairchild or in connection with Fairchild's testimony at Judge Nixon's trial. I also advised them that it was very unlikely that I would ever view the gratuity charge against Fairchild as being unsupportable given Fairchild's own incriminating testimony in the grand jury.

3. I never promised Wiley Fairchild a pardon or that I would help him get a pardon. I did explain to him and/or people acting on his behalf what the pardon procedures were and did advise that if he filed for a pardon as a matter of course the appropriate pardon officials would make inquiry of me and I would apprise them of Fairchild's cooperation with the Government.

4. Prior to Wiley Fairchild's sentencing, in response to questions from his counsel I suggested to his counsel that his

client's interests could well be served if he was truthful in his remarks at sentencing and that if he sincerely felt remorse for his conduct, it likely would be in his interest to express it to the sentencing judge.

5. I never represented to Wiley Fairchild that I would do anything with regard to his son, Drew Fairchild, except to attempt to see to it that he was treated fairly by the Government. I did advise Fairchild's lawyers and Drew Fairchild that I would seek to make sure that he was not punished by the State of Mississippi for his cooperation with the United States. None of this was in the form of a promise to Fairchild as part of a plea bargain or in return for his testimony. It was merely a statement of fact as to my intentions in regard to the treatment of another witness in the case.

6. The only mention of a "smoking gun" that I can recall in conversations with Wiley Fairchild and his lawyers occurred when they initiated plea discussions with me prior to Fairchild's trial date. They advised me that they had a "smoking gun" and proceeded to tell me for the first time about the call from the farm by Nixon to Fairchild.

7. After Bud Holmes' guilty plea, after debriefing him, and after discussing his case with his lawyers, I did tell Holmes that, after hearing his side's version of the facts, that I thought that if we had gone to trial a jury probably would have convicted him of two or possibly three of the five counts in his indictment. I never advised him and never believed that any of

the counts against him should not have been brought or were not supported by probable cause.

8. John Baltar provided the Government with a copy of a survey Wiley Fairchild had done after his indictment. This survey had no affect whatsoever on any Government action during the Nixon trial.

9. I recall John Baltar appearing at the site of the five day jury selection process. I also recall him volunteering bits of information about Mississippi politics, geography and individuals on the venire. Baltar was provided no information about the Government's jury selection decisions.

10. Prior to Wiley Fairchild's trial testimony, I met with him in his office to discuss with him the anticipated areas of direct and cross-examination. The areas that I covered with him came directly from prior statements made by Fairchild. At no time at this meeting did I participate in the preparation of a script for Wiley Fairchild's testimony. John Baltar took notes during this meeting. I have no recollection of and do not believe that I ever saw Baltar's notes. I never had Baltar's notes or the "script" attached to his affidavit in my possession and know of no government representative who ever had possession of the notes or "script." Baltar did express to me concern that Fairchild could be embarrassed during his cross-examination. I advised him that it was perfectly proper for Fairchild and his lawyers to discuss his proposed testimony and likely cross-examination in advance of his appearance. It was my

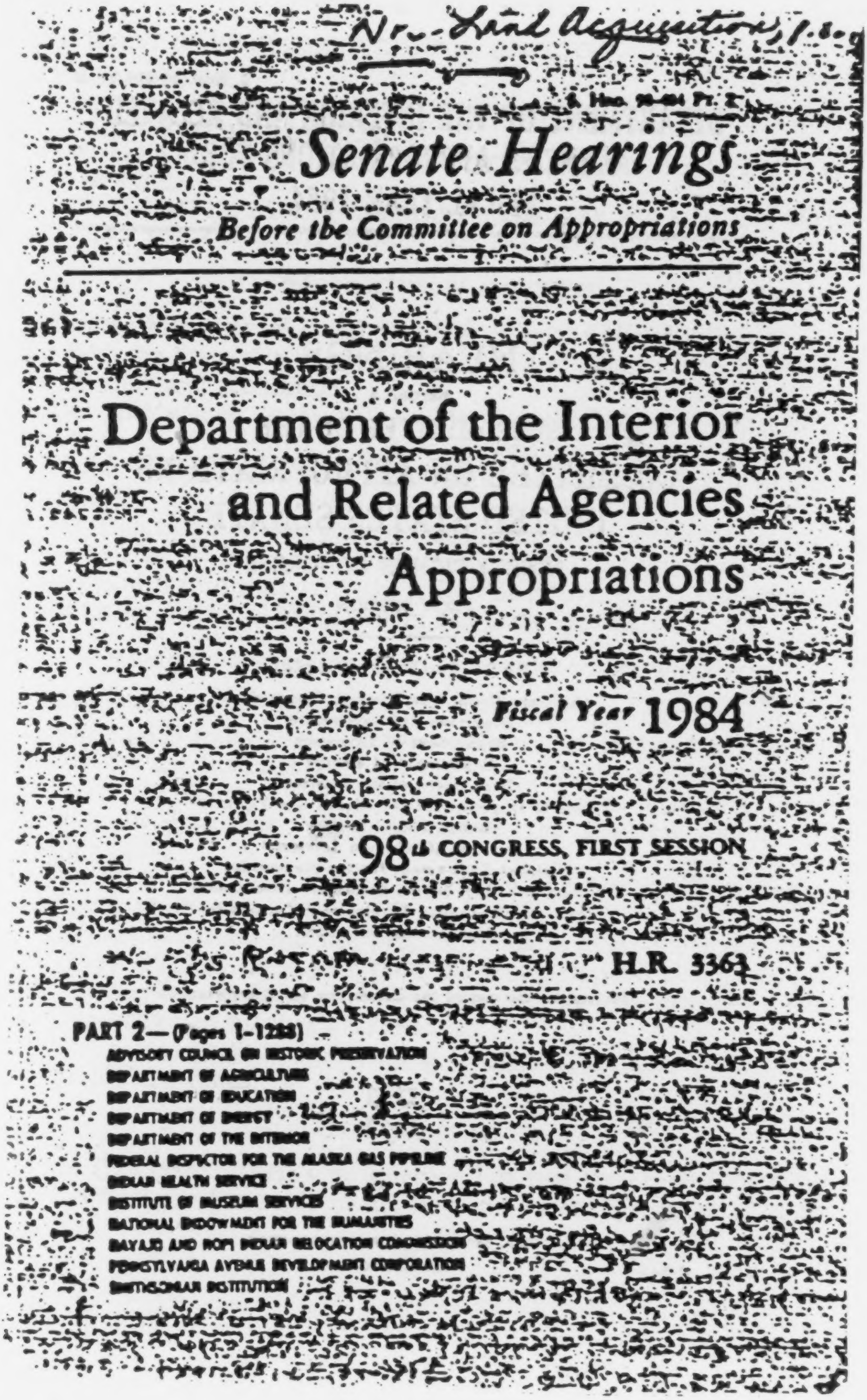
understanding that Baltar was going to show his notes to Fairchild's private attorney and they would be used to help prepare Fairchild for his testimony. I have no knowledge of what Fairchild's preparations for his testimony were outside of my presence. I advised Fairchild on numerous occasions prior to his testimony that he was to tell only the truth when he testified; that the United States was not interested in any testimonial favors from him; that a conviction or an acquittal of Judge Nixon would have no effect on how the Government treated him in the future; and that the only trouble he could get into would occur if he shaded his testimony to help one side or the other at trial. Fairchild at all times indicated that he understood my admonitions and intended to heed them.

Under penalty of perjury I declare that the foregoing is true to the best of my knowledge.

Reid H. Weingarten

DATE: 5/12/88

EXHIBIT N - 31



Non-Land Acquisitions, 1.8

S. Hrg. 98-404 Pt. 2

*Senate Hearings*

*Before the Committee on Appropriations*

Department of the Interior
and Related Agencies
Appropriations

*Fiscal Year* 1984

98th CONGRESS, FIRST SESSION

H.R. 3363

PART 2—(Pages 1-1288)
ADVISORY COUNCIL ON HISTORIC PRESERVATION
DEPARTMENT OF AGRICULTURE
DEPARTMENT OF EDUCATION
DEPARTMENT OF ENERGY
DEPARTMENT OF THE INTERIOR
FEDERAL INSPECTOR FOR THE ALASKA GAS PIPELINE
INDIAN HEALTH SERVICE
INSTITUTE OF MUSEUM SERVICES
NATIONAL ENDOWMENT FOR THE HUMANITIES
NAVAJO AND HOPI INDIAN RELOCATION COMMISSION
PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION
SMITHSONIAN INSTITUTION

S. Hrg. 98–404 Pt. 2

# DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1984

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## HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

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**PART 2—(Pages 1–1288)**

**Advisory Council on Historic Preservation**
**Department of Agriculture**
**Department of Education**
**Department of Energy**
**Department of the Interior**
**Federal Inspector for the Alaska Gas Pipeline**
**Indian Health Service**
**Institute of Museum Services**
**National Endowment for the Humanities**
**Navajo and Hopi Indian Relocation Commission**
**Pennsylvania Avenue Development Corporation**
**Smithsonian Institution**

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17-[illegible] O WASHINGTON : 1984

## NATIONAL PARK SERVICE

## STATEMENT OF RUSSELL E. DICKENSON, DIRECTOR

ACCOMPANIED BY:

DANIEL E. SALISBURY, ASSISTANT DIRECTOR, FINANCIAL MANAGEMENT AND DATA SYSTEMS

WILLIS KRIZ, CHIEF, LAND RESOURCES DIVISION, NATIONAL PARK SERVICE

CRAIG POTTER, DEPUTY ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR

### INTRODUCTION OF ASSOCIATES

Senator MCCLURE. We will now hear from the National Park Service for both the State side of the Land and Water Conservation Fund and for Federal land acquisition.

Our lead witness today will be Mr. Russell Dickenson, Director of the National Park Service who is, again, welcome before our committee.

If you will introduce your associates for us we will proceed with the questions.

Mr. DICKENSON. Thank you, Mr. Chairman.

Present, to my left, Mr. Willis Kriz, Chief of our Land Resources Division, and then on my far right is Dan Salisbury, who is our Assistant Director for Financial Management and Data Systems.

### APPROPRIATIONS FROM THE LAND AND WATER CONSERVATION FUND

Senator MCCLURE. For the record, we would note that Congress appropriated $75 million to the States in fiscal year 1983 and another $40 million for the States in the jobs bill. The fiscal year 1984 budget request for the States is zero. For Federal acquisition in fiscal 1983, including the Pinelands National Preserve, the Congress appropriated $67,505,000.

The fiscal year 1984 budget request for the National Park Service land acquisition totals $54,671,000.

The administration did not propose funds in either fiscal year 1982, fiscal year 1983 or fiscal year 1984. But Congress went along with a 1-year moratorium in fiscal year 1982; however, we have provided a total of $115 million in fiscal year 1983 so far.

What would be your evaluation of the soundness of the local expenditure of these funds?

### ASSISTANCE TO STATES

Mr. DICKENSON. There's no question but that the benefits that have flowed from the State side of the land and water conservation program have been substantial. But in an area such as [illegible] are now, it has been the administration's position that there is a belt-tightening necessary with the kind of balances that have prevailed on the State side, that funding could wait until a more appropriate future time.

Indeed, at the end of the current fiscal year our estimate is that there will be a $288 million obligated but unpaid balance still remaining on the State side.

### SWEENEY RIDGE LAND NEGOTIATIONS

Senator McClure. Mr. Dickenson, back on March 16, 1983, I sent Secretary Watt a letter urging him to direct the Service to "proceed expeditiously to negotiate, in good faith, with the landowner for the acquisition of Sweeney Ridge."

I went on to say that:

> The committee will not consider a reprograming proposal to divert funds from Sweeney Ridge until the owner has rejected an offer for the approved appraised value or has made a counteroffer that is unacceptable to the Park Service.

That letter was cosigned by Senator Byrd, the ranking member of this subcommittee.

Has the Service begun its negotiations with the owner of the Sweeney Ridge property?

Mr. Dickenson. We have, sir.

Senator McClure. When did you begin those?

Mr. Dickenson. Within the week.

Senator McClure. Who represented the Park Service?

Mr. Dickenson. The regional director, Mr. Howard Chapman, and the members of his technical staff.

Senator McClure. What were their instructions regarding the suggestions made in our letter that they negotiate in good faith?

Mr. Dickenson. Of course, the negotiations are still underway, and there have been no conclusions drawn from that to date, Mr. Chairman.

Senator McClure. Did you give them any instructions in this regard?

Mr. Dickenson. We instructed the regional director to make an offer based upon the results of the most recent appraisal obtained. The instructions of the House Appropriations Subcommittee. That was $3.2 million, and the first negotiating with West Aspen, the corporation involved, involved that offer.

Senator McClure. Have the owners declined the offer?

Mr. Dickenson. It is my understanding that there has not been a declination, as additional meetings and discussions will continue, although they have presented to Mr. Chapman some additional information regarding their point of view regarding the appraisal obtained by the Government.

Senator McClure. Were the representatives of the Park Service empowered to act on behalf of the Assistant Secretary?

Mr. Dickenson. They were empowered to make the offer in accordance with the existing appraisal.

Senator McClure. Could they conclude the deal, or does it have to come to Washington for that?

Mr. Dickenson. It has not been concluded. Additional discussions are indicated.

Senator McClure. Are they authorized to conclude the transaction, or does it have to come back here for approval?

Mr. Dickenson. I would say this, Mr. Chairman: that it would have to come back. It will have to come back.

Senator McClure. Even if the owners accept the offer made?

Mr. Dickenson. I'm saying yes; but I also really do not expect that. I think there are going to be negotiations, give and take.

Senator McClure. What would happen if they did accept the offer made?

Mr. Dickenson. If they accept the $3.2 million, Mr. Chapman has authority to conclude the deal.

Senator McClure. He has authority to conclude it if they accept?

Mr. Dickenson. Yes, sir, based upon that.

### SWEENEY RIDGE APPRAISAL

Senator McClure. In your professional opinion, is the National Park Service appraisal for Sweeney Ridge, which was done about 1 year ago, still current and accurate?

Mr. Dickenson. I'm going to ask Mr. Kriz, if I could, to respond. He's the land acquisition technician.

Mr. Kriz. Mr. Chairman, an appraisal is generally regarded as valid for about 6 months. The appraisal is at this time about 9 or 10 months old, so there's some question about its validity. It would depend, of course, on the circumstances, whether there has been a great deal of market activity since the appraisal, whether there have been comparable sales that would indicate a higher value. It's a matter of judgment.

Senator McClure. Have any of the local zoning laws that affect housing density changed since that appraisal?

Mr. Dickenson. My understanding is that the community and the city of Pacifica have made some changes.

Senator McClure. That would affect the appraisal, would it not?

Mr. Dickenson. I believe there might be some changes.

Senator McClure. I think, if I recall the effect of that zoning ordinance, it could have a considerable effect upon the value, would it not?

Mr. Dickenson. I'm not personally familiar with that, so I can't really comment. But I have been informed by staff that some changes by the city have occurred, and we are aware that there will be some changes in the existing price.

Senator McClure. Have interest rates changed in the last year?

Mr. Dickenson. They certainly have. There have been changes in interest rates, yes, sir.

Senator McClure. What is NPS' current estimate of the value of Sweeney Ridge?

Mr. DICKENSON. The existing appraisal is [illegible] million.

Senator McCLURE. Is that your current estimate of value?

Mr. DICKENSON. Until it changes, that's our current estimate; yes, sir. I understand it's $3.29 million, to be more precise.

### SWEENEY RIDGE ACQUISITION ACTIVITY

Senator McCLURE. I understand that.

It's difficult for me to conclude that you are very interested in purchasing this property, or very interested in carrying out the directions from the Congress in that regard. I know you don't regard the project as a very desirable one from your point of view, or not worth the amount appropriated by the Congress.

But I think the facts are you don't have a current and accurate estimate of value, and if that's all you have gone to the owners with is a 1-year-old appraisal, that doesn't sound to me like you're really negotiating in good faith.

Mr. DICKENSON. Mr. Chairman, let me hasten to add to what you just stated.

The Park Service has not made any judgment or made any opinion regarding the merits of the land itself. The only position that we have ever taken regarding Sweeney Ridge is that the funds which Congress had appropriated for the acquisition of Sweeney Ridge were needed for another priority; the priority being our deficiency payments.

Senator McCLURE. But certainly you know that you have made some relative value assessment, at least in your mind.

Mr. DICKENSON. Only in the sense when funds are limited, priorities have to be met, and that is the only kind of action we have taken per Sweeney Ridge.

Senator McCLURE. Secretary Watt said in a letter to us, "The National Park Service professionals don't think it's very valuable to the Park Service."

Is he incorrect in that statement?

Mr. DICKENSON. I would, of course, never want to challenge the Secretary's statements here.

Senator McCLURE. I didn't think you would.

Mr. DICKENSON. But I don't know of anyone in a leadership position in the National Park Service who would advise the Secretary of that.

Senator McCLURE. I assume he must have gotten that from something—from professionals.

Mr. DICKENSON. I'm sure he had conversations with someone, Mr. Chairman. But in our instance, the only position we are taking with the Secretary or the committees is that we very much need some reprograming actions in order to meet our deficiency payments, and that's how we view Sweeney Ridge.

## PETIT BOIS ISLAND

Senator McClure. I have some technical questions on Petit Bois Island which I'll submit for the record with respect to the actions that have been taken.

Some of that record and some of the court memoranda and internal memoranda are interesting reading. I wish I had more time to go into it now, but I would invite those who think they might be interesting to dig them out.

## PREPARED STATEMENT

The statements, of course, and your responses, will be included in the record when received.

[The statements follow:]

### Statement of J. Craig Potter

I appreciate this opportunity to discuss the administration's recommendations for funding from the Land and Water Conservation Fund for fiscal 1984.

The total request for the Department of the Interior is $54.8 million. $54.7 million for the National Park Service and $0.1 million for the Bureau of Land Management. No land acquisition funds are requested for the Fish and Wildlife Service. Within the Department of Agriculture, $10.1 million is requested for land acqusition for the U.S. Forest Service. The requested amounts will be used primarily for the payment of court awards, emergency and hardship acquisitions, and related expenses for acquisition management. The request does not include funding for land acquisition and administrative costs for the Pinelands National Reserve.

We have made substantial progress in implementing the administration's land protection policy. Land protection plans are now being completed for all units of the national park system with non-Federal lands. The results to date clearly indicate that there are a number of alternatives to Federal fee acquisition which will provide the level of protection required to preserve park resources and provide for appropriate public use. We are not compromising protection for the sake of the short-term budgetary savings. Through the land protection planning process we will be able to achieve our preservation objectives in a shorter period of time with a lower expenditure of public funds.

The administration is not requesting funding for State grant assistance in fiscal 1984. We believe that such support is not a high priority in view of the continuing need to reduce the Federal deficit. This concludes my prepared statement. Representatives of the individual agencies requesting funding from the Land and Water Conservation Fund are here with me to answer your specific questions.

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### Statement of Russell E. Dickenson

Mr. Chairman and members of the subcommittee, I am pleased to appear before you today to discuss the fiscal 1984 budget request of the National Park Service for funding from the Land and Water Conservation Fund. I have some brief opening remarks I would like to make before addressing your specific questions. For fiscal 1984 the National Park Service is requesting $50.1 million for land acquisition to cover anticipated awards in condemnation proceedings in six newly authorized areas, general deficiency and relocation expenses, and the related cost of appraisals, title verification, and surveys. Acquisition management expenses are budgeted at $4.6 million.

Last year I reported to the subcommittee on the initial steps we were taking to implement the new land protection policy. Over the past year we have made substantial progress in that regard. Land protection plans are being prepared or revised for the 195 units of the national park system having non-Federal lands within their boundaries.

We have scheduled 71 of these plans to be completed by the start of fiscal 1984. These new plans explore alternatives for the protection of park resources and will only recommend full fee purchase when no other acceptable alternative exists for achieving the Service's preservation objectives. The plans will also provide a useful inventory of requirements for future requests for land acquisition funds. In the long run they will enable us to protect park resources at a minimum cost to the taxpayer.

We are not requesting funding for State grants in fiscal 1984. We estimate that unpaid grant balances, consisting of funds obligated but not yet reimbursed to the States, will exceed $288 million at the start of fiscal 1984. In view of the continued need to hold down Federal deficits as well as the still sizeable level of unpaid balances outstanding, we believe that Federal grant assistance should not be provided in fiscal 1984. Mr. Chairman, this concludes my prepared statement. I will be happy to answer any questions you or the members of the subcommittee may have.

## ADDITIONAL COMMITTEE QUESTIONS

Senator McClure. We will have additional questions for the record for each of the agencies, which will be submitted to you in the next few days.

I want to thank you for your testimony today.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

## ADDITIONAL COMMITTEE QUESTIONS

### State Land and Water Conservation Fund

Question: On the State side, Mr. Dickenson, what is your sense of the continuing need for Federal funding for recreational planning, development and land acquisition activity at the State and local level? Is there a consensus that the demand for local or State recreation resources is increasing or decreasing?

Answer: The demand for local and State recreation resources continues to increase as workers have more free time and live longer after retirement. However, to finance recreation planning, acquisition, and development, States are now using a number of alternate funding sources including bond issues, user and entry fees, lotteries, income tax write-offs for donations, and special taxes on motor fuels, liquor, cigarettes, and oil and mineral revenues.

Question: Has the Administration considered regulatory changes that would emphasize or deemphasize particular portions of the grant program? If so, what?

Answer: There are no codified regulations for the L&WCF program, but in fiscal 1983, the Open Project Selection Process is required for States to assure that an equitable selection of projects is achieved in accordance with the priorities identified in the Statewide Comprehensive Outdoor Recreation Plan. The Open Project Selection Process is also essential to meet the requirements of Title VI of the Civil Rights Act of 1964.

Question: We will ask that you keep us informed on the progress made by the States in obligating and expending these funds, throughout FY 83, as we evaluate the need for funding for the States in FY 84.

Answer: Yes. We will be happy to keep the Committee informed.

### Land and Water Conservation Fund

Question: For the National Park Service, your budget estimate for FY 84 for deficiencies and relocation expenses totals $56,800,000. Are there any other deficiencies that are likely to come due in FY 84? Is any of the money proposed for 84 for new acquisition?

Answer: Based on our best estimate at this time, there are no other deficiencies that will come due in fiscal 1984. However, there is currently outstanding the balance on the Petit Bois condemnation. If paid by October 1, 1983, the balance due is $5.1 million. It is possible that there will be an additional deficiency need in fiscal 1983 at Sleeping Bear Dunes National Lakeshore that could total as much as $10 million. If these awards materialize they could not be funded through reprogramming because the Committees specifically disallowed our request for funds for this area in the 1983 budget. Any awards that might occur in 1983 would be in addition to the estimated deficiency need of $12 million for 1984.

### Congaree Swamp and Sleeping Bear Dunes

Question: Why is it that $37,000,000 of the $56,800,000 is proposed for two projects (Congaree Swamp National Monument and Sleeping Bear Dunes National Lakeshore) that are in excess of the currently authorized acquisition ceiling?

Answer: The $37 million for Congaree Swamp National Monument and Sleeping Bear Dunes National Lakeshore will be required to pay deficiencies on condemnation cases. At the time the cost estimates were prepared on which the statutory ceilings were based, there was no way to predict that the awards on condemnation cases at these two areas would be of such magnitude. Legislation to increase the statutory ceiling at these areas in the requisite amounts has been introduced.

### Land Protection Planning Process

Question: We often hear that the Land Protection Planning Process is used to slow down obligation of funds for land acquisition. How many land protection plans have been completed to date? How many National Park Service units have had land acquisition actions approved since the withdrawal of Regional land acquisition authority in September, 1982? In what types of cases are you approving acquisitions in advance of completion of the land protection plan? Of the total requests received by the Director for land acquisition action approval, how many are currently being held up? Including the Pinelands National Preserve in New Jersey, the Committee funded 17 different projects in FY 83. How many of these projects have had no obligations occur as of yet? Please provide a complete response for the record, indicating the estimated date for obligation of remaining funds.

Answer: Six land protection plans have received the Assistant Secretary's concurrence as consistent with policy. They are being prepared for printing after editing and approval by the Regional Director. Eleven additional draft plans are currently under review in the Washington Office, and a total of 71 plans are scheduled for completion by October 1, 1983.

As of April 29, 1983, approximately 24 units have had land acquisitions approved since the withdrawal of the Regional land acquisition authority in September 1982. Acquisition has been deferred on 8 tracts at 7 areas. Land acquisition is being reviewed on a case-by-case basis at these areas without approved land protection plans. This review is based on the need to acquire for high priority, hardship or emergency reasons or to acquire for administrative purposes. There are currently 11 requests being reviewed. Of the 17 projects funded in fiscal 1983 by the Committee, funds have been obligated for all but 5 projects. These 5 projects are Biscayne National Park, Cuyahoga Valley National Recreation Area, Delaware Water Gap National Recreation Area, Indiana Dunes National Lakeshore, and Martin Luther King, Jr., National Historical Site. While no Land Protection Plans have been completed—draft plans have been cleared by the Assistant Secretary for Fish and Wildlife and Parks—in compliance with the Land Protection Policy. Seventy-one are scheduled for completion this fiscal year. It is estimated that the funds appropriated in fiscal 1983 for the 17 projects will be obligated before the end the fiscal year.

### Sweeney Ridge

Question: Did the owners make a counter proposal? What was the National Park Service reaction — did they bargain or merely acknowledge the counteroffer?

Answer: The owner of Sweeney Ridge, West Aspen Corporation, made a counteroffer in the amount of $9.02 million. The National Park Service finds the counteroffer unacceptable and does not believe that continued negotiations would be productive.

Question: What are you going to do now? What are you going to do if the next appraisal establishes the value of the property at $15 million?

Answer: Since the Park Service finds the offer from the West Aspen Corporation unacceptable, the Service plans to submit a reprogramming of the Sweeney Ridge funds to the payment of outstanding deficiencies in condemnation cases.

Question: According to one of your Land and Water Conservation Fund status sheets, you "anticipate funds ($1,439,000 provided towards an anticipated deficiency in Sleeping Bear Dunes) to be charged to the Sweeney Ridge appropriation." Is it accurate to say that of the $9,600,000 appropriated by Congress for Sweeney Ridge acquisition, $1,439,000 has been siphoned off to pay a part of an anticipated deficiency that you have budgeted in FY 84? Please provide a complete statement for the record.

Answer: A total of $1,439,000 was made available to Sleeping Bear Dunes National Lakeshore to pay condemnation awards on 10 tracts consisting of some 130 acres. We had expended $2.7 million in fiscal 1982 for land acquisition at Sleeping Bear Dunes and requested $8.4 million in fiscal 1983, therefore, under the [illegible] of the Continuing Resolutio [illegible] October 2, 1982, we paid the outstanding deficiency awards at Sleeping Bear Dunes. Subsequent to paying the awards, Congress deleted the $8.4 million from the fiscal 1983 budget request. Since no funds were appropriated to Sleeping Bear Dunes we have no alternative but to cover these expenditures from an area with unobligated appropriated funds. We do not anticipate acquiring the Sweeney Ridge tract in the Golden Gate National Recreation Area therefore, we plan to charge the Sleeping Bear Dunes expenditures against the Sweeney Ridge unobligated appropriation.

### Petit Bois Island

Question: Mr. Dickenson, I have a few questions about another project that you have requested funding for in FY 84. You have requested $4,300,000 for Petit Bois Island in the Gulf Islands National Seashore. This would be in addition to the $3,700,000 we appropriated in FY 83 and in addition to the $330,000 deposited with the court as the National Park Service estimated value when the declaration of taking was filed on May 15, 1980. If we approve your budget request for $4.3 million, we will have paid $8.0 million more than our original estimate of value of $330,000 which is not yet even three years old. Is that correct? Is that all of the potential costs to the Government for this declaration of taking action? Is the $4.3 million requested in 84 to settle the deficiency on the surface award and to cover the anticipated mineral award or is the $4.3 million solely for the mineral value, as your justifications imply?

Answer: The total $4.3 million requested for fiscal 1984 will be used to pay the anticipated award on the mineral interest on Petit Bois' declaration of taking and to pay anticipated deficiencies on the 7 other tracts in condemnation. The balance due on the surface interest on Petit Bois was to be paid by reprogramming of funds this fiscal year. The Service's effort to reprogram funds to Gulf Islands National Seashore was denied by the Committees; therefore, the funds requested in fiscal 1984 will be used first to pay a portion of the balance due on the surface interest on the Petit Bois' declaration of taking. The balance due on this declaration of taking if paid by October 1, 1983, is $5.1 million. The amount due on the mineral interest will not be known until the case has been tried and there has been a judgment.

Question: Mr. Dickenson, did the Government appeal the Fifth Circuit's decision? Why not? Did Interior recommend appeal?

Answer: The Government did not appeal the Fifth Circuit's decision. Th Department of Interior recommended that the decision be appealed, but th Solicitor General ruled that the Government would not appeal.

Question: I want to read a few admittedly selective excerpts from memorandum prepared for signature of Carol E. Dinkins, Assistant Attorne General, Land and Natural Resources Division, U.S. Department of Justice to th Solicitor General recommending against appeal. I do not know whether or not Ms Dinkins ever signed the memo but I find sections of it damaging to all parties Please bear with me for a few minutes:

Page 2. "Having reviewed the full transcript of the 6-day trial, we can fi no substantial basis on which to quarrel with the court's fact finding." Als "The judgment here awards the landowners over 18 times the amount estimated the Government as just compensation for the taking. The motivation to appeal justifiably strong, and the legal bases suggested for an appeal seem plausib enough in the abstract. In the particular, however, the circumstances and th record in this case undercut appeal"

Also, "All those familiar with this case are agreed that this acquisiti went badly from start to finish."

The Fifth Court separated surface values from mineral values. Page 4: " denying the Government's motion for a new trial, the Court reaffirmed the reasons for its severance of these proceedings and added some harsh finding abo the Government's conduct of this action."

Page 5. "There remains one more factor to consider. The Government's appe in United States v. 499.472 Acres of Land in Brazoria County, Texas, Freep

Minera [illegible]., et al. (Byan Mound Salt Dome). 22.5 million debacle, is to be argued [illegible] Fifth Circuit panel on November 15, 1982.... In large measure, we are there asking the Fifth Circuit to pull our chestnuts out of the fire, i.e., to overlook a veritable parade of horribles and sins of commission and omission. We just may pull it off in that case, the quality of mercy not having completely disappeared from the contemporary scene. But enough is enough. Appeal of this $6 million case to the same circuit will surely increase our embarrassment and, more important, dilute the quantity of mercy available in that court."

Page 11. "Our own appraisal testimony was given little or no credibility by the court and cannot be relied on in an appeal."

Page 12. "In the midst of trial, Government counsel came to the realization that the United States might actually be acquiring substantially less land than the amount nominally taken." Also, page 13: "After the trial, the Government obtained a new survey of the property which showed that its actual size was 105 acres less than nominally taken."

Page 14. "To reject an unwarranted appeal is not, however, to foreclose the possibility of reducing this award.... A Rule 60(b) motion to reduce the judgment proportionally remains possible, if we are indeed able to prove convincingly that the property was 105 acres smaller than its nominal acreage on the date of taking."

It looks to me like the NPS 1-underestimated value by a factor of 18; 2- did not know how much land they were taking and got 612 acres instead of 717 acres; 3- had an appraiser that was not able to establish his credibility with the Court. It looks like the Justice Department 1- changed attorneys two weeks or so before the case went to trial and, though an effort was made, was unable to get a continuance; 2- missed several key points on examination or cross-examination; 3- concluded that there is no real overwhelming basis for appeal, but 4- has not given up on eventually reducing the size of the award and 5- most importantly, does not want to ask the Fifth Circuit to pull $6 million worth of chestnuts out of the fire if, as a result, $22.5 million worth of chestnuts burn up. What is the current status here, Mr. Dickenson? I understand that the owner is not satisfied that he has not been paid and has attempted to secure other Federal lands as a partial settlement. Is that correct?

Answer: A total of $3,540,000 has been deposited into the court toward the judgment on the declaration of taking on the Petit Bois tract, leaving a balance unpaid of $5.1 million, including interest computed through October 1, 1983. The owner filed a Writ of Execution on April 7, 1983, to sell portions of Gulf Islands National Seashore to satisfy the outstanding judgment on Petit Bois. At the hearing before the Judge of the District Court on May 3, 1983, the writ was dismissed.

## Declarations of Taking

Question: Does this Committee review Declarations of Taking before they are filed? Who does? Is it really possible to file a Declaration of Taking without an accurate acreage or valuation estimate? Perhaps this Committee should review those actions and simply not approve some of them until the Service has done an adequate job. While we may thereby experience some unwanted development, we might save a lot of money in the long run.

Answer: The Appropriations Committees do not review Declaration of Taking proposals except in so-called inholding (pre-1959) areas. Under procedures established during the authorization hearings for Biscayne National Monument in 1968, the Service is required to obtain the approval of the House and Senate Interior Authorizing Committees before a Declaration of Taking is filed. The House Interior and Insular Affairs Committee has since withdrawn the requirement for obtaining advance approval to the filing of Declarations of Takings, but we continue to obtain the Senate Energy and Natural Resources Committees' approval prior to filing. There is seldom a basis to question the accuracy of the Government's appraisal prior to filing; the issue is not brought into focus until the defendant secures an appraisal, generally after filing and normally just before trial. The entire subject value determination was discussed in Assistant Secretary Arnett's letter of January 11, 1983, to this Committee. Among other things, the letter compares recent court judgments to Government testimony. While it can be seen from that comparison that the Government's estimate is frequently below the court's judgment, the record is not nearly as bad as might be inferred from the one grossly disproportionate judgment in the Petit Bois case. And the results in the Petit Bois case should not necessarily be attributed to a "faulty" appraisal -- other factors seem to have played a greater role.

It is possible to find discrepancies in acreage on tracts acquired either by purchase or by condemnation when water boundaries are involved. Ocean front land, especially islands found along the Atlantic and the Gulf coasts, are always shifting and changing in size and shape.

Question: Is it your recommendation that we pay off the surface value at this time and wait for the court award on the mineral interest? Does the landowner collect interest on the unpaid amount? What is the interest rate in this case? Is there still any legal option to reduce the surface award.

Answer: It is the recommendation of the National Park Service to pay the balance on the surface taking. The landowner collects interest at the rate of 14.5 percent per annum. There is no legal option to reducing the surface award except the acreage adjustment. We will bring up that issue in the pretrial hearings on the mineral interest.

## QUESTIONS SUBMITTED BY SENATOR ROBERT C. BYRD

### New River Gorge—Land Acquisition

Question: Mr. Dickenson, Congress has appropriated for land acquisition, within the authorized boundary of the New River Gorge National River approximately $4 million. How much has been obligated for land acquisition at New River Gorge, and how many acres have been acquired?

Answer: As of April 30, 1983, $700,668 has been obligated and a total of 30 acres have been acquired by purchase and 511 acres have been acquired by donation.

Question: This Committee's report accompanying the fiscal year 1983 appropriation directed the Park Service to proceed with land acquisition at New River Gorge. What action has the Service taken to acquire land at New River in compliance with the Committee's directive?

Answer: The National Park Service is developing a new land protection plan for New River Gorge that will emphasize alternatives means of protection. Until this land protection plan is completed, land acquisition at New River is being limited to emergency, and hardship acquisitions, and acquisitions for administrative purposes. In addition to the land that has been purchased, appraisals have been received on 9 additional tracts, containing 1,338 acres, with an appraised value of $2.1 million. Negotiations have stopped on eight of these tracts because of price disagreement. An offer to sell has been obtained on one tract, however, acceptance is being deferred until completion of the land protection plan.

Question: Please describe the basic elements of a land protection plan.

Answer: Land protection plans include five basic elements:

1. An explanation of Departmental policy and why the plan is being prepared.

2. A description of park resources and plans for management and visitor use.

3. A description of non-Federal ownerships and uses, defining activities that are compatible or incompatible with unit purposes.

Interest rates have fallen from a rate of 18 percent used in the appraisal to a current rate of about 10 percent;

Construction costs have remained flat while the general economy has strengthened; and

the Pacific Growth Control Ordinance has been amended to exempt single family detached houses on infill sites.

The West Aspen Company counteroffer is deemed unacceptable and we do not believe continued negotiations would be productive, based on the difference in value. Therefore, a revised reprogramming is being prepared for resubmission to the Subcommittees. The amount proposed for reprogramming is $2,478,072 which is the balance due on the settlement plus interest if paid by June 15, 1983.

## QUESTIONS SUBMITTED BY SENATOR THAD COCHRAN

### Gulf Islands National Seashore

Question: As of May 16, 1980, what was the total amount of appropriated funds designated for Gulf Islands National Seashore: what amount of the appropriated funds were not specifically obligated?

Answer: As of May 16, 1980, the total amount of appropriated funds designated for Gulf Islands was $17,986,220 and the amount unobligated is $1,973.25.

Question: On what date was the Park Service's request for appropriation in the 1983 budget submitted to Congress?

Answer: The Park Service's request for appropriations in the 1983 budget was submitted to Congress in January 1983, as part of the President's Budget Request.

Question: The Park Service request for appropriations of the 1983 budget was made at the time of or shortly after the trial of this case in August 1981. Accordingly, why did the Park Service only request $3.7 million for Gulf Islands National Seashore in view of the evidence presented at trial?

Answer: The budget request of $3.7 million was our best estimate of what the award might be. Although the Service was aware of the evidence presented by the landowner at the trial, until a judgment was rendered and all efforts to appeal had been exhausted, there was no basis for seeking the landowner's estimate of value.

Question: Page 296 of the Park Service Budget Justification—FY 84 indicates a request for Gulf Islands National Seashore of $4,300,000.00. The remarks section on the page indicates that the requested funds are needed to pay the expected deficiency on the award for the mineral interest on the declaration of taking on Petit Bois Island and for deficiency needs on other pending condemnation cases. What is the Park Service's estimate of the amount needed to pay for the minerals on Petit Bois? What other condemnation cases are pending within the Gulf Islands National Seashore?

Answer: The Park Service's estimated value for the mineral interest on Petit Bois is $358,710. The $4.3 million requested in fiscal 1983 was to pay the expected deficiency on both the mineral interest on Petit Bois condemnation and on 7 additional tracts that complaints in condemnation action had been received by the Department of Justice for filing.

Question: Page 296 of the budget justification also indicates a line item for deficiencies and relocation (general) in the amount of $1,500,000.00. Has all of this amount been earmarked for use in paying the surface judgment on Petit Bois as well as all of the 4.3 million indicated on Page 296.

Answer: It is anticipated that the balance due on the Petit Bois deficiency, including interest computed through October 1, 1983, is $5.1 million. A portion of the $1.5 million would be made available to cover the shortage between the $4.3 million requested and the need of $5.1 million. However, by using a portion of the $1.5 million to pay the shortage on the Petit Bois condemnation, other deficiency shortages may occur in fiscal 1984, including any deficiency needs on the mineral interest on the Petit Bois tract.

Question: For fiscal year 1980 Congress appropriated $22,715,000.00 less than the amount requested by the National Park Service for the 1980 budget. In view of that cut the Park Service diverted $2,217,480.00 from Gulf Islands National Seashore. What was the basis of the Park Service's decision in diverting or reprogramming those funds from the Gulf Islands National Seashore? At the time this diversion was made, December 4, 1980, what was the total amount of appropriated funds designated for Gulf Islands National Seashore?

Answer: When the $2,217,480 was applied to the fiscal 1980 "slippage," it was estimated that the funds remaining at Gulf Islands National Seashore would be adequate to acquire the remaining private land as well as pay any deficiencies on the tracts in condemnation. On December 4, 1980, the total amount of funds designated for Gulf Islands was $16,502,700 before the $2,217,480 was diverted.

Question: In view of Judge Nixon's Order granting the Government's Motion to Quash Writ of Execution, does the National Park Service fully intend to pay the balance of the judgment by October 1983?

Answer: The National Park Service intends to pay the balance of the judgment on the Petit Bois condemnation as soon as funds are appropriated.

Question: What are the Park Service's plans for resolving the minerals on Petit Bois?

Answer: The National Park Service plans to proceed with the trial on the declaration of taking of the mineral interest on Petit Bois.

## SUBCOMMITTEE RECESS

Senator McCLURE. The subcommittee will stand in recess until 2 p.m. on Thursday, April 28, 1983, at which time we will review the 1984 budget request for the strategic petroleum reserve and the national petroleum reserves.

[Whereupon, at 4:10 p.m., Wednesday, April 27, the subcommittee was recessed, to reconvene at 2 p.m., Thursday, April 28.]

EXHIBIT N - 32

1304 Covington Drive
Tallahassee, Florida 32312
September 8, 1983

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Honorable William H. Webster
Director
Federal Bureau of Investigation
10th and Pennsylvania Avenues, N.W.
J. Edgar Hoover Building
Washington, D. C. 20535

Attention: COUNSEL, INTERNAL INVESTIGATION UNIT
Federal Bureau of Investigation

Dear Sir:

I would like to file a formal complaint and a request for an immediate investigation into the manner, approach and action of FBI Special Agents Donald W. Baldwin and Paul Scudiere concerning a statement solicited from me in connection with a purported Grand Jury investigation involving contracts and lot purchases I had made on Petit Bois Island, Mississippi.

On July 19, 1983, with no prior notice, FBI Special Agents Donald W. Baldwin and Paul Scudiere walked in my place of business and informed me that they would like to ask me some questions concerning my investment on Petit Bois Island. I was told they could not force me to be sworn in, but it would be to my advantage because they could then give me a written copy of my statement to review, make any corrections, then sign and this was their preference. I informed Agents Baldwin and Scudiere that I would be more than happy to answer questions provided it was a sworn statement, and I would have an opportunity to read the responses and sign the statement and receive a copy of said statement. Under these circumstances Agent Baldwin commenced the interview.

From the very beginning I made it very clear that due to time lapsed since the purchase of my Petit Bois Island property, I could not remember exact dates and numbers, but I would be happy to answer all questions to the best of my recollection.

I was quizzed several times on why I purchased the property without first seeing the property. Each time I explained that I have confidence in Mr. Stocks based upon dealings I had with him on St. George Island property. I was questioned as to whether I had paid any money down or a deposit on the lots at the time I signed the contract. I was questioned on who witnessed the contract and told Mr. Baldwin I did not know if the contract even had a witness, much less who it was. I was continuously questioned on whether there was a male or female or any person in the room at the time I signed the contract. I was questioned whether or not I had a check with me, or whether I had to go outside to my truck to get one, and whether or not it was folded. I told them that normally I keep a check in my billfold, but that I could not remember in this instance whether I had that check or whether I went outside and got a check from my vehicle. I was questioned several times on the amount of the check. Mr. Baldwin had in his possession a contract which he informed me showed I had given Mr. Stocks $5,000. He also told me that he did not have a copy of my second purchase, and that he could not understand why since he was suppose to have a copy of all contracts. He then asked me how much I had given as a deposit. I told him if that contract showed $5,000 then the total had been $6,000, since I only deposited $1,000 with the second lot purchase. To the best of my recollection, those were the major items covered during the interview. The two agents thanked me for my time; told me they would be back with me in a few days. I assumed they would be back to bring me the written copy of my statement for my approval and signature.

The next day it was after lunch before I got to my office and the same two agents were waiting for me. I was told they had been at my project for most of the morning. Neither time was I given the courtesy of a phone call or a scheduled appointment. At this time they expressed a desire to continue the interview with a few additional questions. I was asked questions about my personal background, income and ability to pay for the property I had contracted to purchase on Petit Bois Island. The project on which I am now working on was questioned and accusations were made that it was also a sham to force the State of Florida to purchase the property from me as they alleged has been many of Mr. Stocks' other projects. I informed Mr. Baldwin that Mr. Stocks was involved in the Shell Point project only from an investor's standpoint, and he was a limited partner. The project was not and is not for sale to the State of Florida and many lots have been contracted with third parties and several closed. My project already has a motel, marina and restaurant actively doing business. Mr. Baldwin made the statement that he felt he could name the majority of my contract holders and that they were the same group of investors who had purchased property on Petit Bois Island. I told him he was welcome to see my files if he felt like it was necessary, but to my knowledge none of my lots had been sold to anybody who owned or contracted to purchase property from Petit Bois Island. In fact, Mr. Stocks still to this date has not sold nor caused to be sold, the first lot on my current project.

I was questioned as to whether or not I knew the Government was going to condemn Petit Bois Island prior to purchasing the two lots. I informed Mr. Baldwin that I was not even aware the Federal Government had the power or authority to take people's property away from them to make a park. I was aware that they had this authority in situations which may be deemed critical to the public welfare such as road right-of-ways, etc.

I was then requestioned about my contract and how many days had lapsed between the purchase of the first lot and the second lot and the total purchase price of each lot. Mr. Scudiere then ended the interview by showing me the contract they had which showed both lots on one contract with a total down payment of $5,000 and in a very strong "I got you now" tone of voice, got up to leave and said something to the effect of "then where did this contract come from and who fabricated it?"

I looked at the contract and informed him it was my signature and at the time I purchased the second lot, both purchases must have been converted to one contract which is not at all unusual in real estate dealings. Later, after checking through my personal records, I found both checks — the first one was for $4,000, and the second one was for $1,000.

Several comments were then made by the two agents indicating to me that they felt like I was not telling the truth. As I stated in the beginning, time has made the exact dates and numbers fuzzy and the $5,000 figure was given to me by them at the beginning of the interview as being the amount on one lot purchase. I was given the feeling that they thought they had scored a major victor by me not remembering the two contracts had been combined into one contract.

As they walked out the door, I asked when I would be receiving a copy of my interview to review and sign and was informed that I would not get one. When asked why not, Mr. Baldwin informed me that they were going to waive the requirement of my signing a sworn statement. I informed him that I did want a copy of my statement to review and sign. He then told me that it was against the law for him to give me a copy of the interview. I reminded him that it was his request that I be sworn in; he assured me that I would receive a copy. Then he told me that he would ask the U. S. Attorney if I could have a copy.

I gather their reason for not letting me get a copy and reading my statement was because they probably did not like the content of my statement and wished to slant the "interview" to their liking. I say this because Agent Baldwin had supplied another contract holder in Tallahassee with a copy of his notes even though it was not a sworn statement and refused to interview another person because a court reporter was present. Furthermore, I have been informed since the July 19, 1983 interview, that FBI Agents in other districts who have been interviewing contract holders have supplied copies of statements made by contract holders with no problems whatsoever.

I personally feel that Mr. Baldwin's interest in this investigation has lost all objectivity and become a personal vendetta. He told me in the interview he did not care if 99% of the contracts were valid, if he could find just one, he was going to nail John Stocks; that he was convinced

Mr. Stocks had defrauded the United States Government. At that time I asked him why the Government did not choose to let Mr. Stocks retain the property and continue his development if they felt like the price was too high. Neither Agent had any comment about this question. If the statements made from my interview were entered correctly, then why is Mr. Baldwin afraid to let me see it?

After approximately several days of hearing nothing, I wrote a letter to the U. S. Attorney (copy enclosed--dated July 22, 1983). The U. S. Attorney, Thomas Dillard, called me several days later and referred me to Lawrence G. Lawler in Jacksonville, Florida, who is evidently Mr. Baldwin's and Mr. Scudiere's superior. I was unable to reach Mr. Lawler and was referred to Mr. Richard Davis. Mr. Davis told me he would look into the matter and if I had been told I would receive a statement to sign, then I was entitled to one. Attached is copy of Mr. Davis' formal response to me (dated August 12, 1983), in which it appears Mr. Baldwin may have contacted the Assistant U. S. Attorney, David L. McGee, and been successful once again in refusing me a copy of my statement.

As you can see from this letter, the Agent involved, Donald W. Baldwin, has apparently attempted to convert my sworn statement into an "interview" report on Form FD-302 which apparently because of some magic procedural rules in the FBI, can be withheld whereby a sworn statement cannot. Further, it is adily apparent from this letter that Agent Baldwin is trying to cover up s action.

Obviously, in light of the treatment I have received from Mr. Baldwin and Mr. Scudiere, apparently with the assistance of a Mr. David L. McGee, Assistant U. S. Attorney, Tallahassee, Florida, I respectfully request your office to immediately contact me concerning this matter. At a minimum, I think Mr. Baldwin and Mr. Scudiere ought to be sworn in and state under oath at what point they decided to convert my sworn statement into an "interview report" so that they could refuse to grant me a copy of my statement. They never informed me of this, and I will be happy to supply your investigators with a sworn statement regarding these facts. I think it is highly suspicious and irregular that Agent Baldwin who appears to be emotionally involved in the investigation, has to resort to these types of games when, I am reliably informed, Agents in other areas of the country who have interviewed contract holders in this matter on an objective basis have no difficulty in supplying copies of the statements to the persons being interviewed.

I would be happy to cooperate with your Agency in any way to get to the bottom of this matter.

Respectfully,

Lex C. Thompson

Enclosures

EXHIBIT N - 33

## AFFIDAVIT

STATE OF MISSISSIPPI

COUNTY OF HINDS

I, R. DAVID SANDERS, being first duly sworn, depose and say that:

On or about July 20, 1983, I was interviewed by Special Agent Cletus Blake, of the Jackson office of the Federal Bureau of Investigation. This interview was requested by Mr. Blake and was conducted at the Jackson offices of the Federal Bureau of Investigation. Mr. Blake had advised me in advance that the subject of the interview was to be the sale of property on Petit Bois Island to John Stocks. I participated in this interview without counsel.

In response to my questions, Mr. Blake stated that he was making no record of the interview other than his written notes. He also assured me that the investigation of which this interview was a part did not at that time, and would not in the future, focus on me as a subject.

Mr. Blake questioned me about the entire history of the Sanders family's ownership of the property on Petit Bois Island, including when and how it was acquired, the negotiations we had with the National Park Service and the negotiations and transaction with Mr. Stocks. In the course of the interview, I asked Mr. Blake what it was about the transaction with Mr. Stocks that had drawn the interest of the FBI. He replied that the sale to Stocks for $1,792,500.00 on December 31, 1979, and the Court's determination that, some five months later, the property was worth $6,120,000.00, suggested the possibility that some fraud may have been practiced. Mr. Blake asked about my acquaintance with and knowledge of several persons, including John Stocks, Gene Lewis, Harold Lewis, and a Mr. Thompson, and another man whose name I cannot recall. He stated that these were the persons on whom the investigation was focused. He further stated that the request that he interview me had come from the Jacksonville, Florida, office of the United States Attorney.

Mr. Blake inquired extensively into the details of the contract between the Petit Bois, Inc. stockholders and Mr. Stocks. I pointed out to him several times that all of this information could be found in the record of the trial. He wanted me to recount these details for him, nevertheless. I explained the

terms of the contract for sale of Petit Bois, Inc. stock, the note and deed of trust, the provision for release of lots as they were sold, the down payments, assignments of notes, the escrow mechanism, etc. Mr. Blake asked about the appraisers used by defendants in the trial and seemed particularly interested in Louis Clark's role. He wanted to know how we had arrived at the value we placed on the property for sale to Mr. Stocks. I explained how we came to have our own appraisal made by Robert Viele, and how the sale price was negotiated.

Mr. Blake asked me how Judge Nixon came to hear this case. I replied that I assumed he was assigned the case in the normal course of things. Mr. Blake asked if we had had discussions about which judge might be "best" to hear the case, and whether there had been some thought that Judge Nixon would be more favorable to our position. He seemed to think that this case normally would have been heard by a Magistrate because it was a civil case. At this point, I asked Mr. Blake if he was a lawyer. He replied that he was a CPA, but not a lawyer. I told him thatI had had virtually nothing to do with the preparation for the trial inasmuch as I did not own the property when it was condemned, and suggested that the attorneys of record could give him more information along these lines. He asked who these attorneys were, and I gave him all the names. He asked me what I thought of Judge Nixon's conduct of the trial and grasp of the issues. I found this line of questioning somewhat bizarre and disturbing in its implications and told him so. Mr. Blake asked me if, to my knowledge, Judge Nixon had any interest in the property on Petit Bois Island or the property on Deer Island. I think he also inquired about any possible interest Judge Nixon might have in St. George Island. I told him I had no such knowledge and that I was frankly astounded by the suggestion.

Mr. Blake then inquired generally about the Deer Island transaction and about my other business interests, which I briefly described for him. This interview lasted about two hours. The tone of the interview was friendly and courteous, and Mr. Blake was not at all aggressive toward me in his questions.

This affiant is a resident of Hinds Couny, Mississippi.

R. David Sanders
R. David Sanders

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid on this the 12th day of September, 1983.

Linda S. Dale
Notary Public

My Commission Expires: My Commission Expires July 11, 1987

# EXHIBIT N - 34

## Affidavit of Ralph Drury Martin

Ralph Drury Martin of Washington, D.C., hereby makes the following declarations:

1. I am a Trial Attorney for the Public Integrity Section of the United States Department of Justice and in that capacity was the lead counsel for the United States in United States v. John Stocks and H. Eugene Lewis, No. CR-86-P-27-S (Nothern District of Alabama) for the investigative stage starting in 1984 and the pre-trial and trial stages of the case.

2. The investigation of Stocks and Lewis began in the United States Attorney's Office in the Northern District of Florida as a result of information received by the Federal Bureau of Investigation in Tallahassee, Florida in March 1983. That information did not include any allegations of misconduct by Judge Nixon.

3. During 1983 the United States Attorney's Office received further information that Stocks and Lewis were at a party with Judge Nixon prior to the Petit Bois Island condemnation trial, but the information did not include any specific allegations of wrongdoing by Judge Nixon.

4. In January and February 1984, the Public Integrity Section assumed responsibility for this investigation and the matter was transferred to the Southern District of Mississippi. In view of the fact that based on the currently available information Judge Nixon would be a possible witness in any grand jury investigation of the matter, it was decided that the grand jury aspect of the investigation should be conducted before the

EXHIBIT 1

Special Grand Jury investigating the Wiley Fairchild/Judge Nixon matter so that Judge Nixon would not be a witness in a grand jury over which he presided. The two matters, however, always proceeded as separate and independent matters. The Special Grand Jury was requested in May 1984 and was convened in July 1984.

5. In the period July through October 1985, during plea negotiations with W. P. "Pat" McMullan, former president of the Mississippi National Bank, McMullan made specific detailed allegations concerning a bribery scheme involving the payment by Stocks and Lewis of $300,000 including substantial renovations to Judge Nixon's home, in return for a favorable ruling on the value of the condemned property and the appropriate interest rate in the Petit Bois Island matter. This was the first specific allegation concerning wrongdoing by Judge Nixon in the Petit Bois Island matter which the Government had received. While evidence was found to corroborate many of the facts provided by McMullan, there was not sufficient evidence to support a criminal prosecution.

Under penalty of perjury the foregoing is true to the best of my knowledge.

Ralph Drury Martin

DATE: 5/12/88

EXHIBIT N - 35

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA, :

v. : CASE NO. 86-A-00027-S

A. EUGENE LEWIS. :

## MOTION TO DISMISS AND OTHER RELIEF

Defendant, A. EUGENE LEWIS, by and through undersigned counsel, and pursuant to Rule 12(b), Fed. R. Crim. P., and Rules 6(e) and 16(d), Fed. R. Crim. P., moves the Court to dismiss and order disclosure and other relief as appropriate, and alleges:

1. By separate motion, the Defendant has requested disclosure of certain affidavits of Agent Don Baldwin, Barbara Withers, Andrea Simko Gardner, Fred Thompson and C. Ben Tucker, filed in the Petit Bois Island civil trial, on 30 September 1983.

2. These affidavits were the result of last-minute efforts by Government civil attorneys to stop the disbursements of funds and satisfaction of the judgment entered in the Petit Bois Island civil trial.

3. The existence of the then ongoing investigation was known to certain members of Congress as has been evidenced by separately filed motions herein when the appropriation was made to the Gulf Islands National Seashore for satisfaction of the judgment entered herein (see attachments).

4. The appeal of the civil judgment was voluntarily dismissed on motion of the Government based in large part apparently on the contents of the so-called "Carol Dinkins" memorandum (see attachments).

5. It is respectfully submitted that the internal decision-making process relative this criminal investigation was precipitated in bad faith, in derogation of the due-process guarantees of the Fifth Amendment to the Constitution of the United States in the following respects:

A

a. The primary issue of the Petit Bois Island civil case was not the surface rights. The surface rights were appraised by Government appraisers at some $300,000. The trial judge, the Honorable Walter L. Nixon, Jr., found the fair market value of the 717-plus acres to be approximately $6,120,000 [the reported size of the judgment being inflated due to interest].

b. The mineral interests to Petit Bois Island were severed and have yet to be decided. Conservative estimates place the true value of those interests to be one-quarter billion [sic] dollars ($250,000,000). Unless the judgment of the civil case is successfully attacked by the Government, John R. Stocks would be the holder of those mineral interests.

c. Attached hereto and incorporated by reference is recent Eleventh Circuit law regarding the type of fraud necessary to successfully attack a civil judgment. See Travelers Indemnity Company v. Gore, 761 F.2d 1549 (11th Cir. 1985), hereto attached.

d. For fraud [obstruction of justice?] to lay a foundation for an independent action for relief from judgment, under Rule 60(b), Fed. R. Civ. P., it must be such that it was not an issue in the former action, nor could it have been put in issue by the reasonable diligence of the opposing party. Perjury is not of such a basis. Obstruction of justice in the form alleged, "through attorneys," and as "general counsel," is a specificall designed allegation to satisfy these requirements of civil law.

6. It is further respectfully submitted that the disproportionalit between the award by the court, the Honorable Walter L. Nixon, Jr., and th appraisals by the Government precipitated an unfounded investigation int attempts to bribe a Federal judge. See in camera exhibits previously file with this Court which Defendant hereby renews his request for disclosure.

7. Attached hereto and incorporated by reference is corresponden regarding the negotiations and circumstances regarding the proffer of t

witness A. EUGENE LEWIS. That letter is dated 25 March 1985. Thereafter, the Court will please notice the memorandum dated 30 May 1985 embracing similar, but not identical, subject matter.

8. At the grand jury proceedings on 30 May 1985, the grand jury tapes, provided counsel under Rule 16 disclosure, make apparent from conversations between counsel for the Government and the grand jury that the Defendant LEWIS was "set up" by certain operative facts. In particular:

a. He was asked extensively (Count VI) regarding the existence of the "side letter" granting rescission rights. He was never shown a copy of his own contract containing those rescission rights and therefore testified in front of the grand jury that he recalled no such document. Government counsel then explained to the grand jury in Mr. LEWIS' absence that the Government was in possession of a document of such a nature signed by Mr. LEWIS and told the grand jury that "we have a problem."

b. Mr. LEWIS was given no right or opportunity to recant his testimony, if in fact recantation of such were necessary. His testimony was not "inconsistent with his proffer" which would subject him to prosecution.

c. The Government violated its agreement with the Defendant not to prosecute him as set forth in its letter of 25 March 1985.

9. It is respectfully submitted that the reason to indict A. EUGENE LEWIS is to anticipate the affirmative defense by the defendant John R. Stocks of "good faith reliance on the advice of counsel." Further, it is respectfully submitted that the Government is seeking to set the stage for an action under *Travelers Indemnity Company v. Gore*, *supra*.

10. For these reasons, the Defendant would request the Court to require production for *in camera* inspection and/or disclosure, as appropriate, the internal memoranda relative the decision to prosecute A. EUGENE LEWIS, in particular events happening subsequent to 25 March 1985 up until 30 May 1985, or any other time subsequent or prior.

11. On 24 October 1985 and 29 October 1985, Defendant A. EUGENE LEWIS met with Ralph D. Martin, Karen Moore, and Lee Radick [ph.], deputy section chief. Government counsel, Ralph Drury Martin, took extensive notes of statements and representations made by the Defendant A. EUGENE LEWIS and these statements have not been disclosed to the Defendant in the Rule 16 discovery and are clearly subject to disclosure. At the first meeting in October with the Government prosecutors, it was revealed that the Defendant was about to be indicted unless he could give material incriminating information relative an alleged bribe of the United States District Court Judge, the Honorable Walter L. Nixon. Defendant vehemently and repeatedly indicated that no such evidence existed. At the second said meeting, Defendant produced extensive evidence regarding material defenses to the charges which were ignored as the Defendant was unable to provide the evidence demanded by the Government against Judge Nixon. The indictment was thereafter filed and arraignment was had on 31 October 1985.

12. The Court has reviewed in camera at the outset of these proceedings a certain exhibit, believed to be testimony of W. P. McMullan, Jr., which to a large extent corroborates the allegations set forth above.

13. It is believed that additional documents exist in the form of intra-departmental memoranda detailing a course of action consistent with the allegations set out above.

WHEREFORE, the indictment and prosecution instituted in this cause of action are based upon bad faith and improper prosecutorial motives, the fundamental protections of the due-process clause of the Fifth Amendment have been violated. A dismissal is in order and is hereby requested. In furtherance of these grounds, the disclosures requested above are renewed. Finally, an evidentiary hearing on the issues is requested.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument has been furnished to Ralph D. Martin, Esquire, and Karen Moore, Esquire, United States Department of Justice, Post Office Box 50163, "F" Street, Washington, DC 20001-0163, by ~~hand~~/mail this 20 day of February, 1986.

Respectfully submitted,

ROBERT AUGUSTUS HARPER, JR.
Law Firm
317 East Park Avenue
Post Office Box 10132
Tallahassee, FL 32302-0132
(904) 224-5900

Counsel for A. EUGENE LEWIS

RAH:n73

EXHIBIT N - 36

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, )
Plaintiff, )
vs. ) CASE NO. CR86-A-27-S
JOHN R. STOCKS, et al, )
Defendants. )

## DEFENDANT, STOCKS', MOTION TO RECONSIDER DEFENDANT'S MOTION TO DISMISS INDICTMENT AND REQUEST FOR HEARING

Comes now Defendant, John R. Stocks, and requests this court once again to reconsider Defendant's Motion to Dismiss Indictment on the grounds of selective and vindictive prosecution and prosecutorial misconduct.

In support of Defendant's Motion to Reconsider, Defendant has attached as Exhibits copies of affidavits of several individuals who were apparently interviewed by the Federal Bureau of Investigation during their investigation of this case. Said documents, which support Defendant's Motion to Dismiss, were recently produced by the Government in Jackson, MS, and Tallahassee, Florida. Also attached as Exhibits are a copy of the corrected affidavit of William N. Clark, a copy of a letter by attorney, Aaron Bowden, a motion for in camera inspection filed by the government during the course of the civil proceeding, and excerpts from the grand jury testimony of Gene Lewis.

Defendant requests that the court review the affidavits and other documents attached hereto, especially the affidavit of [illegible] Thompson (Exhibit A) wherein it is stated that FBI Agent Baldwin told Mr. Thompson that he did not care if 99 percent of the

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MAR 17 1986
Robert Augustus Harper
Law Firm

contracts were legitimate, if he could find one that was not, he was going to nail John Stocks. This affidavit, along with Exhibit C, a memorandum of David Sanders are prima facia evidence that the government's prosecution of the Defendant is vindictive and that John Stocks has been singled out for prosecution by the government. Other defendants in the civil case were similarly situated as evidenced by the contract holders.

Defendant also requests that the court examine Exhibits D and G. Exhibit D illustrates that the government not only attempted to intimidate witnesses through FBI investigations, see Exhibits A, E and F, but also attempted to intimidate witnesses in connection with the grand jury proceedings. When read together with Exhibit G, it also appears that the government used the grand jury process to obtain evidence to support a motion to vacate the judgment during the course of the condemnation suit. State's Exhibit G, a motion for an in camera hearing, was filed in September of 1983, after the grand jury investigation in August of 1983, in Tallahassee, Florida. The government says in that motion that its investigation is ongoing. See Defendant's Exhibit D. The use of a grand jury investigation to obtain evidence for use in a civil suit is improper. C.f., United States v. Gold, 470 F. Supp. 1336 (N.D. Ill. 1979).

Evidence of misconduct before the grand jury is found in Defendant's Exhibit H, which contains excerpts from the grand jury testimony of Gene Lewis. It would appear by the questions asked of Lewis that the government attorney was attempting to prejudice the grand jury by implying that the size of the award granted by the judge was the result of a bribe. This line of questioning was highly improper and in and of itself warrants dismissal. See, United States v. Lawson, 502 F. Supp. 158 (N.D. Md. 1980)(holding that misleading evidence presented to a grand jury which creates a false impression warrants dismissal of indictment).

The government cannot seriously dispute that during the course of the civil trial the government attempted to conceal from the court relevant evidence regarding lack of comparability of the "comparable" sales as testified to by the government appraiser. The court should review the testimony of the government appraiser, Mr. Turner. Vol. IV, p. 916 of the civil trial.

The government's handling of the civil trial was most unusual. Attached as Exhibit J is a copy of the Opinion of the Fifth Circuit affirming the denial of the Rule 60(b) motion and citing the government's negligence.

Now the government in a letter to this court dated March 10, 1986, says that it has lost the grand jury testimony of Paul Cowan in the Northern District of Florida in August 1983, and that the court reporter cannot find her notes. Attached as Exhibit K are excerpts from the grand jury testimony of Paul Cowan before the grand jury in the Southern District of Mississippi in October of 1984. Interestingly, he says at page 18 that when he reviewed the documents he had given to the grand jury in Tallahassee "there were things that I expected to see there that weren't and things that I didn't expect to see there that were." Who added or subtracted from the documents he delivered to the government? It is important to remember that the Tallahassee grand jury did not indict.

It is clear that a federal district court, under its inherent supervisory powers, may dismiss an indictment based upon governmental misconduct where the government's acts place in jeopardy the integrity of the criminal justice system. See, United States v. Samango, 607 F.2d 877 (9th Cir. 1979). Dismissal is also appropriate under the due process clause of the Fifth Amendment to the Constitution of the United States. See, United States v. Sears and Roebuck Co., 518 F. Supp. 179 (C.D. Cal. 1981).

As evidenced by the Exhibits attached to Defendant's Motion to Reconsider, the government from the beginning of the investigation which led to this prosecution has attempted to intimidate and influence the testimony of potential witnesses, has placed irrelevant and misleading evidence before the grand jury, has used the grand jury process as a subterfuge to obtain information to attempt to vacate a judgment in a civil case and has chosen not to present relevant evidence to the court during the course of the condemnation proceeding. The government's conduct merits closer scrutiny. At least a colorable showing has been made. Defendant should be provided a hearing on these issues and permitted to engage in discovery to aid in obtaining additional evidence of the government's conduct.

The government today approaches being all-powerful. It should not be permitted to obtain an indictment at the expense of the Constitution. The integrity of the entire criminal justice system has been called into question by the government's conduct. The Defendant urges that the court grant his motion to dismiss, or in the alternative to afford the Defendant a full and fair opportunity to be heard on the merits of this defense.

REDDEN, MILLS & CLARK

BY: L. Drew Redden
L. Drew Redden

William N. Clark
William N. Clark
940 First Alabama Bank Bldg.
Birmingham, Alabama 35203
(205) 322-0457
Attorneys for Defendant,
John R. Stocks

## CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion to Reconsider and Request for Hearing on Ralph D. Martin and Faye S. Ehrenstamm, P. O. Box ~~50168, "F" Street~~ Station, hand delivered US Attorney's Office, Bhm, Al Washington, D.C. 20004-0168, and on Robert Augustus Harper, P. O. Box 10132, Tallahassee, Florida 32302-0132, by mailing to them a copy of the same, properly addressed and with sufficient prepaid postage affixed thereto, this the 14th day of March, 1986.

William N. Clark
William N. Clark, Of Counsel

EXHIBIT N - 37

John R. Stocks

February 2, 1987

Honorable William Stafford
Chief Judge
United States Courthouse
110 East Park Avenue
Tallahassee, FL 32301

Re: John R. Stocks, et. al. vs.
Robert L. "Bobby" Howell, et. al.
Case No. TCA 82-1033-WS

Dear Judge Stafford:

I just recently received a copy of your Order entered December 5, 1986, in this case. For reasons unknown to me, my attorney of record at the time, Woodrow Harper, did not receive a copy of the Order from the Court, and I obtained my copy from a local newspaper reporter. After reading the Order, I felt compelled to write this letter, not out of any disrespect, but to explain some of my actions during the pendency of this litigation.

I would like to state at the outset that, contrary to what you have concluded (and I say that respectfully), I never have and I never will use the judicial system to harass and intimidate my opponents. I am too much of a red blooded American patriot to do that, and for reasons I will discuss later, I have too much faith in the judicial system to misuse it. I will admit to being a fighter, and when legal rights and principles are grossly violated, as they were in this case, the judicial system should be there to preserve rights and restore principles, and if appropriate, even award damages against the wrongdoers.

The reason why I can say so confidently that I have not and would not abuse the judicial system to harass and intimidate others is because I have been a victim of such harassment and intimidation. For over a three (3) year period, beginning in early 1983 and ending in mid-1986, I have been pursued by the United States Government because I whipped the government in a condemnation proceeding in the State of Mississippi. In that

4209 North Monroe Street Tallahassee, Florida 32303 (904) 562-[illegible]

proceeding, the government condemned 717 acres of my land on Petit Bois Island, and in the ensuing condemnation trial, the federal court there awarded me 6.2 million dollars in compensatory damages, plus interest. Since that award, the government has pursued me relentlessly. It has conducted FBI investigations, convened three grand jury proceedings, obtained indictments and subjected me to two criminal trials. None of these government activities ever resulted in a finding that I did anything wrong, but I was subjected to this persecution and prosecution for over three years.

In my opinion, I was subjected to such government action for one of two reasons. The first is that the Petit Bois Island condemnation proceeding was not over with the court's award of compensatory damages, plus interest, because that award was compensation for the land value of the condemned property, and there remained for trial the issue of the value of the condemned mineral rights under the land taken by the government. The value of those mineral rights is substantially higher than the value of the land, and the government may have been trying to find any kind of leverage it could to use against me in the trial on the value of the mineral rights. I would like to think that the government did harass and intimidate me for this reason given above, but there is a second reason why the government might have done what it did, and it is significantly more disturbing and disgusting than the first reason. That second reason relates to Judge Walter Nixon, who presided over the condemnation trial and who awarded me the 6.2 million dollars in compensatory damages. It is my belief that the government went after Judge Nixon because he had the courage to rule in my favor, and how the government went after him. They subjected him to a lengthy grand jury proceeding during the time I myself was subjected to grand jury proceedings (later discussed). For the longest time, I thought that the government was after me, but at or about the time of my indictment, I learned that the government was really after Judge Nixon. I know this because the government offered me immunity, or a free walk from criminal prosecution, if I would testify against Judge Nixon to the effect that he took a bribe for his ruling in the condemnation case. That would have been an easy way out for me, saving me thousands of dollars otherwise spent in my defense and allowing me to tend to other matters more important to my financial well being, including the litigation before you. However, I could not accept the government's offer of immunity and take the easy way out because it was not the truth. I refused to give the government Judge Nixon, and when I

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did. they continued to subject me to criminal prosecution on the weakest of charges. So, you see, I have firsthand experience with harassment and intimidation, having seen it used against me to get at either me or a federal judge. I know firsthand that such harrassment and intimidation stinks, and for that reason, would not engage in such actions.

In spite of this bitter experience with government harassment and intimidation, I still came away from the experience with a healthy respect for the judicial system. In fact, throughout my ordeal with the government, I saw the courtroom as my only chance to escape the government's action. When I finally was indicted, I had a chance to demonstrate my innocence, and I did. I was vindicated by the judicial system. I would not abuse it.

In your December 5, 1986 Order, you characterized my actions in this litigation as "fold(ing) his tent". I can understand how you might characterize my actions that way. I prefer to characterize my actions differently. I would say that I ran out of time, money and energy. It was in the fall of 1985 and the winter of 1986 when I, in your view, had difficulties in responding to certain discovery requests and to orders of the Court. I know that what I say in the following sentences is not necessarily a legal excuse for my actions, but the facts stated in those sentences will certainly better explain my actions. I was indicted by federal grand jury on October 31, 1985. Following that indictment, I was advised by my criminal defense attorneys that I had better devote all or most of my time to the defense of the charges in that indictment. Given the choice of a criminal conviction and not being able to pursue other endeavors, I obviously opted against a criminal conviction and I heeded the advice of my criminal defense lawyers. My first trial on the federal indictment was in Birmingham, Alabama on March 17, and after approximately one week of trial, the government committed error in the prosecution of its case such that the trial judge (Charles W. Allgood) declared a mistrial. My second trial was also in Birmingham on June 2 - 26 (before District Judge Sam C. Pointer, Jr.) and that trial ended in an acquittal. Needless to say, I had to spend thousands of dollars and hours of time and energy in the defense of those criminal charges there, and quite frankly, I was not able to attend to others matters in the manner that I would have liked, including this litigation. As indicated above, that is not a legal excuse for my actions, but I would feel much better if I could convince you that my actions or inactions in

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this litigation were due to the pressing nature of other problems, as opposed to disrespect for the judicial system or a cavalier attitude towards the authority of the Court.

I am told that it would not be appropriate for me to attempt to reargue points which have been ruled upon by you. However, there were two specific matters for which I was condemned in your Order, and I think unfairly. Those matters relate to Jay Shuler and Robert Livingston. Jay Shuler was the law partner of Al Shuler, who was the regular county attorney during the period in which my development plans on St. George Island were thwarted. Jay Shuler was let out of this litigation by a summary judgment, based on the contention that he never acted as county attorney. The record before you established otherwise. Among other things, Jay Shuler attended at least one county commission meeting as acting county attorney where my interests were discussed and affected. The minutes of that meeting were attached to my reply memorandum in opposition to Mr. Shuler's motion for summary judgment, and those minutes are directly contrary to Mr. Shuler's affidavit to the effect that he never acted as county attorney. Additionally, the Shuler law firm filed frivilous lawsuits against me, which lawsuits were some of the acts I was complaining about in your court. My understanding of the law is that one partner is responsible for the acts of other partners, and thus, even if Jay Shuler was not the main lawyer in those frivilous lawsuits, he was responsible for the frivilous lawsuits filed by his law partner. The second matter relates to Robert Livingston. Your Order of December 5, 1986, characterizes Mr. Livingston as a biology professor who sought only to advise officials in Franklin County on ways to protect Apalachicola Bay. Our case against Dr. Livingston was predicated on more than his biological advice. It was predicated on his giving of legal advice. As early as August, 1981, before this litigation was even filed, my then attorney, Thomas G. Pelham, advised Dr. Livingston of what he was doing in giving certain opinions to the Franklin County Commission and how such opinions might expose him to legal liability (see attached letter dated August 20, 1981 from Mr. Pelham to Dr. Livingston). As I understand the law on the subject, Dr. Livingston did have liability exposure for his opinions. In that respect, I did not sue Mr. Shuler or Dr. Livingston cavalierly. I consulted with my attorneys who advised me that naming these individuals as defendants was proper. This advice from my attorneys was consistent with my belief that each and every defendant was a party or participant in the conspiracy to stop my proposed development on St. George Island.

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One other point I have been criticized for in the Court's Order of December 5, 1986, relates to my not giving the defendants information as requested. The documentary information on which my case was based was in the possession of attorney Gene D. Brown, who once was my partner in Leisure Properties, Ltd. Mr. Brown steadfastly refused to give me any of my files. In fact, we had to petition this Court for an order forcing Mr. Brown to grant me access to all the files so that I could give this information to the defendants in the case. I must state that after xeroxing (what Mr. Brown's secretary said was all the information that "she thought I needed"), approximatley $6,000 and approximately 36,000 sheets of information (mostly closing documents) I had neither the information that I needed nor what the defendants needed. I have been refused to this date any other information from Leisure Properties, Ltd., or Mr. Brown. I know firsthand the problems in presenting a case when files are kept from other parties. Mr. Brown sued me in another case in Franklin County for over a million dollars, and in that case, I claimed that Mr. Brown sold or borrowed on approximately $750,000 of my assets. The problem with my claim was that I did not have the documents to prove it. It is no wonder that Mr. Brown and Leisure Properties would not give me all the files as requested, and I will represent to the Court to my dying day that he did not do so in spite of this Court's order.

I would like to point out one other thing to your honor. I purchased approximately 4,000 acres on St. George Island in 1971. I met on many occasions with environmentalists, county and state officials, and many others attempting to arrive at a sound development plan which satisfied all concerned. In order to work out a plan that would be agreeable to the public officials at all levels, we developed two DRIs, and we hired the most knowledgable land planner in the entire country (John Simonds of Pittsburg) to plan what would be the most responsible use of this land on St. George Island. After reviewing his plan and moving a marina site three times at Dr. Livingston's request and Franklin County Commission's demand, which cost us over $350,000, the same County Commissioners and the same Dr. Livingston then said that the marina should not be in the very location that they had demanded. Did I or do I feel frustrated? Yes, your Honor, I do. I am totally confused. When these environmentalist and public officials can block and stop a development for their own selfish personal reasons, then I personally think that a part of American freedom has been eroded away. I have always stated to Franklin

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County Commissioners (and Dr. Livingston) that if you don't like John Simonds' plan for the Island, simply tell us what you think is reasonable. The only answer I would get is "let's hire Dr. Livingston to do a study to see if anything at all could be put on this land, and by the way, you are going to have to pay Dr. Livingston's fees". This was in spite of the fact that we already had a DRI on the property proving commercial usage for my land. After the DRI, the only thing remaining to be decided was density on these commercial properties, and I was never able to get an answer from the county on that density. We submitted at great expense five plans only to have all the plans rejected. When I would ask what would be acceptable, the response I got was "do another plan and see if Dr. Livingston would approve it", and while my plans were being disapproved, plans identical to mine were being approved when submitted by Franklin County residents. A double standard for development approval existed, and that was one of the bases of my case.

At the risk of sounding disrespectful, and certainly not intending to be disrespectful, I have always felt that I was in an uphill battle with the Court in this case ever since Don Baldwin gave you in camera testimony back in May, 1983. At that time, my attorneys and I were trying to obtain certain discovery from one Gene Andrews, who refused to answer various questions asked by my attorneys. We certified those questions to the Court and asked for an order compelling Mr. Andrews to answer those questions. After the public hearing on that motion, Don Baldwin was allowed to present testimony to the Court in camera. Obviously, I do not know what Mr. Baldwin told you, and I may never know. However, you must understand that it was Don Baldwin who relentlessly pursued the criminal investigation of me for over three years, an investigation which ended in an acquittal. The charges which resulted from that investigation and which went to trial, obviously were not considered to be serious ones against me, because, as discussed above, the government was willing to drop those charges and give me immunity if I would give them damaging testimony against Judge Nixon. That was something I would not and could not do. At any rate, the point is that Don Baldwin has been a protagonist against me for a long time, and it does not seem fair that an FBI agent can advise the Court on my actions without my knowing what that advice is. Again, I do not intend to be disrespectful, and I am not suggesting that you were in any way prejudiced against me. Rather, I am just trying to state a country boy's view of fairness, and relative to Don Baldwin's in camera testimony, I always felt that I was fighting something, but I did not know what.

I apologize for taking so much of the Court's time with this letter. However, I wanted to try to convince the Court that I am not as terrible a person as others may have said I am or as your Order of December 5, 1986 paints me. I hope that I have not said anything offensive in this letter, as that was not my intent. Rather, my intent was to explain my various actions or inactions in this case so that you would have a fuller picture. Hopefully, the Court will reconsider its December 5 Order in light of the facts presented in this letter, because justice would be better served by such a reconsideration, at least in my opinion.

I am writing this letter myself, and I am not sure of what legal niceties or proprieties I must follow, but my participation in various lawsuits have taught me that I am supposed to send copies of whatever is sent to the Court to all other parties. Since I am not trying to have a private communication with the Court with this letter, I am sending copies of it to all the attorneys for the defendants in the litigation.

Thank you for your time and attention.

Sincerely,

John R. [illegible]

JRS/dls
Enc.
CC: Walter Meginniss, Esq.
James B. Fenson, Esq.
Van P. Russell, Esq.
Woodrow Harper, Esq.
William Roland, Esq.
Ben Watkins, Esq.
Roland G. Meyer, Esq.
Kenneth Hoffman, Esq.
David McGee, Esq.

EXHIBIT N - 38

EXHIBIT N - 39

DON EDWARDS
10th District, California

COMMITTEE ON
JUDICIARY

CHAIRMAN
SUBCOMMITTEE ON
CIVIL AND
CONSTITUTIONAL RIGHTS

COMMITTEE ON
VETERANS' AFFAIRS

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April 11, 1988

David Overlock Stewart, Esquire
Miller, Cassidy, Larroca & Lewin
2555 M Street, NW, Suite 500
Washington, DC 20037

Dear Mr. Stewart:

This will acknowledge receipt of your letter of March 25, 1988 concerning House Resolution 407, proposing the impeachment of Judge Walter L. Nixon, Jr.

I assure you that you will be afforded the opportunity to present Judge Nixon's case to Congress in a full and fair manner.

As a first step, I believe it would be helpful for you to meet with Alan Baron, Chief Counsel for the Subcommittee on this matter, to discuss the procedures we plan to follow. I believe that Mr. Baron has already been in touch with you.

With kindest regards.

Sincerely,

Don Edwards

DON EDWARDS
Member of Congress

DE:mm

# EXHIBIT N - 40

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

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|---|---|
| UNITED STATES OF AMERICA, | |
| v. | Criminal No. H85-00012(L) |
| WALTER L. NIXON, JR., | |
| Defendant | |

## MEMORANDUM IN SUPPORT OF MOTION TO VACATE CONVICTION AND SENTENCE

Pursuant to 28 U.S.C. § 2255, defendant seeks an order vacating his conviction on two counts of perjury and his sentence of five years in prison. [1] After reviewing the procedural and factual background of the investigation and prosecution of Nixon, this Memorandum will address the following grounds for vacating the conviction:

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[1] Although defendant is not currently incarcerated, he is scheduled to surrender to federal authorities on March 23, 1988. Thus, he satisfies the jurisdictional requirement for a motion under § 2255, which applies to an individual who "is presently in custody pursuant to the federal judgment in question, or if not presently in custody may be subject to such custody in the future pursuant to such judgment." Dist. Ct. Rules Governing Section 2255 Proceedings, Rule 2(a). In any event, this Motion also may be treated as a Motion for New Trial under Federal Rule of Criminal Procedure 33, Mitchell v. United States, 368 U.S. 439 (1962) (per curiam), and if that course is followed defendant is entitled to an evidentiary hearing under that rule. See DeMarco v. United States, 415 U.S. 449 (1974); United States v. Johnson, 487 F.2d 1318, 1325 (5th Cir.), cert. denied, 419 U.S. 825 (1974)

1) That, in violation of the trial court's discovery order and the constitutional guarantee of due process, the prosecutors failed to disclose all of the promises, inducements and arrangements that had been made with Wiley Fairchild, a central witness, in return for Wiley Fairchild's guilty plea and cooperation with the government;

2) That, in violation of the constitutional guarantee of due process, the prosecutors allowed Wiley Fairchild to testify in an incomplete and misleading manner about the promises and inducements that the government had made to him and about the mutual cooperation and assistance that had occurred between Wiley Fairchild and the government; similarly, the prosecutors allowed Drew Fairchild to testify in an incomplete and misleading manner about the federal prosecutors' assistance to him;

3) That, in violation of the trial court's discovery order, 18 U.S.C. § 3500 and due process, the prosecutors failed to disclose to defense counsel a statement of Wiley Fairchild which would have materially aided the defense in cross-examination;

4) That, in violation of the constitutional guarantee of due process, the questioning of defendant before the grand jury was structured in such a way as to create a "perjury trap," and, in effect, to manufacture a perjury offense and thereby entrap the defendant;

5) That, in violation of the constitutional guarantee of due process, the government targeted Nixon for investigation with improper motive and purposes and through improper means, including but not limited to: (a) by bringing untenable charges against other individuals to coerce those witnesses to give damaging testimony against Nixon; (b) allowing witnesses to testify before the grand jury about allegations against Nixon that the prosecutors at the time of the testimony well knew were false: and (c) an apparent attempt to undermine a civil judgment ordered by Nixon against the federal government.

We seek a prompt evidentiary hearing in this Court, as provided in § 2255, to resolve all of these critical matters.

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DEATHS – 2
COMICS – 4
BUSINESS – 8
B

The Clarion-Ledger

November 14, 1985 ■ THURSDA

# Stocks: Feds offered pre-indictment deal

By HARVEY RICE
Clarion-Ledger Staff Writer

Millionaire developer John Stocks of Tallahassee, Fla., said Wednesday that he was offered a deal by federal prosecutors just prior to his indictment in exchange for his testimony against U.S. District Judge Walter L. Nixon Jr.

"I will tell you there were more damn offers on the table Wednesday and Thursday than you can shake a stick at, and they're still on the table," Stocks said in a telephone interview. "Yes, they do want Judge Nixon."

Stocks said he had no information to offer prosecutors that would incriminate Nixon.

Stocks was indicted Oct. 31 on one charge of obstructing justice and three charges of perjury during a 1981 condemnation trial in which Nixon ordered the U.S. government to pay Stocks nearly $9 million for a Mississippi barrier island.

Nixon was indicted Aug. 29 on one charge of accepting an illegal gift for his influence in a drug case and with three counts of perjury before the special grand jury in Hattiesburg.

Nixon has pleaded innocent to all charges and faces a Jan. 21 trial in Hattiesburg.

On Friday, attorneys for Nixon filed a sweeping motion asking the government to disclose any offers or agreements made by prosecutors to Stocks and several others who have testified before the special grand jury.

A. Eugene Lewis of Tallahassee, Stocks' attorney who was indicted for aiding the alleged obstruction of justice and perjury before the grand jury, told the Tallahassee Democrat newspaper that prosecutors "offered me a chance to walk if I could say something nasty about Judge Nixon."

U.S. District Judge John V. Parker of Baton Rouge, La., called to preside over the grand jury at the request of the U.S. Justice Department's Division of Public Integrity, has put a gag order on all federal employees regarding the special grand jury. The Public Integrity Division investigates allegations of official corruption.

A Justice Department spokesman would not comment Wednesday about whether any offers were made to Stocks or Lewis.

Stocks said his attorneys spoke with prosecutors five days before his indictment. "You can walk free," Stocks said he was told. "We get what we want."

Stocks said he sold his stock and stepped down Dec. 31 as chairman and director of Gold Leaf Corp., the company that paid $12 million for the scrap from the Statue of Liberty renovation.

His son remains as vice president and the corporation rents its Tallahassee offices, which are near Stocks' offices, from Stocks.

"When we first started acquiring this project, the grand jury was meeting in Tallahassee," Stocks said about a 1983 grand jury that looked into charges of wrongdoing during the Petit Bois Island condemnation trial.

He said he agreed then that, "If there was an indictment, I would put some distance between me and the project."

Stocks said he would remain in a consulting capacity for about six months to help his replacement, Lou Tobodo. Tobodo will be president and director of Gold Leaf, but no one will assume the title of chairman, Stocks said.

Tobodo said the change would not adversely affect Gold Leaf because, "John has imprinted his personality and his approach on the people here."

Gold Leaf produces statues and memorabilia from the remains of the Statue of Liberty and buildings on Ellis Island where thousands of immigrants entered this country.

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## I.

## PROCEDURAL BACKGROUND

Nixon was indicted on August 29, 1985, on one count of accepting an illegal gratuity in violation of 18 U.S.C. § 201(g), and three counts of making false declarations before the grand jury. After a jury trial in January 1986, he was acquitted on the gratuity count and one perjury count, but convicted on two perjury counts. The convictions were based on the following grand jury testimony:

Count III

"Q. Did he [Bud Holmes] ever discuss the Drew Fairchild case with you?

"A. No, not to the best of my recollection. I think I would recall if he had."

Count IV

"Now, I have had nothing whatsoever officially or unofficially to do with the Drew Fairchild criminal case in federal court or state court . . . I never handled any part of it, never had a thing to do with it at all and never talked to anyone, state or federal, prosecutor

> or judge, in any way [to] influence anybody with respect to this case."

On March 31, 1986, the District Court denied Nixon's motions for judgment of acquittal and new trial, and sentenced him to five years in prison. The Fifth Circuit affirmed the convictions on April 30, 1987, 816 F.2d 1022 (5th Cir. 1987), and denied his petition for rehearing and suggestion for rehearing en banc on September 8, 1987, 827 F.2d 1019 (5th Cir. 1987) (per curiam) (en banc). The Supreme Court denied Nixon's Petition for Certiorari on January 19, 1988.

We are advised by the Probation Office that Nixon must surrender to federal authorities on March 23, 1988.

## II.

## FACTUAL BACKGROUND

This case involves a complex factual background, which requires careful review of several diverse chains of events. The dominant theme throughout the investigation and prosecution of Nixon was the government's headlong determination to trap and convict a federal judge, In pursuit of this dubious objective, the government abused the grand jury process, using it to manufacture perjury charges that were used as clubs to coerce witnesses to provide testimony against Nixon while simultaneously allowing witnesses to make allegations before the grand jury that the prosecutors knew were false. And still in pursuit of those dubious objectives, the prosecutors concealed material facts about government promises to Wiley Fairchild, concealed a statement of Wiley's that had been developed with the prosecutor, allowed Wiley to testify in an incomplete and misleading manner about his relationship with the government, and allowed Drew Fairchild also to testify in an incomplete and misleading manner about the federal prosecutors' assistance to him.

### 1. The Petit Bois Island Case

In an eight-day trial beginning August 23, 1981, Nixon heard evidence concerning the federal government's condemnation of Petit Bois Island for inclusion in Gulf Island National Seashore. The trial pitted the government against the owners of the island, most of which was held by John Stocks of Tallahassee, Florida. United States v. 717.42 Acres of Land, Etc., C.A. No. S80-0450(N) (S.D. Miss.). The government claimed that the condemned parcel was worth $330,000, while Stocks sought an award of $6.6 million. In a Memorandum Opinion dated March 29, 1982, Nixon awarded the landowners $6.1 million.

According to later government statements, the government discovered during trial that its survey of the island might be inaccurate and that the actual parcel could be 100 acres smaller than the government had stipulated. The government did not bring that information to the District Court's attention until nine months later, however, after Nixon issued his Memorandum Opinion. On May 24, 1982, he denied a motion for new trial on these and other grounds. The government appealed that ruling, but voluntarily dismissed the appeal in November 1982, assuring the Fifth Circuit that it would seek amendment of the judgment under Federal Rule of Civil Procedure 60(b). See Motion of Appellant to Dismiss Appeal, United States v. 717.42 Acres of Land, Etc., No. 82-4273 (5th Cir.).

Inexplicably, the government did not file the promised Rule 60(b) motion for another six months, waiting until after more than one year had passed from Nixon's Memorandum Opinion. After Nixon denied that motion as untimely on July 21, 1983, the government filed a Motion for an In Camera Hearing, in which it claimed that the government had evidence that the landowners' proof at trial had involved a fraud on the court. At a hearing on September 12, 1983, the government refused to disclose that evidence to counsel for the landowners, insisting that the Court review it in camera. Nixon declined to take such an unusual step in an adversarial proceeding. The government renewed that request in another hearing on September 30, 1983, but Nixon again found no basis for it in law.

The Fifth Circuit affirmed Nixon's handling of the post-trial motions, noting in a one-paragraph order, "the government's negligence in this case precludes awarding relief and makes a hearing below unnecessary." No. 84-4636 (October 26, 1984).

The Fifth Circuit was not alone in concluding that the government had bungled the case. In a Senate hearing on Petit Bois Island, Senator McLure revealed a Justice Department memorandum that concluded "we can find no substantial basis on which to quarrel with the [District Court's] fact finding." The memorandum, which was prepared for the head of the Lands and Natural Resources Division of the Justice Department, noted that "All those familiar with this case are agreed that this acquisition went badly from start to finish." The memorandum recommended against an appeal, which would "surely increase our embarrassment and, more important, dilute the quantity of mercy available in that court [the Fifth Circuit]." Exhibit 1, pp. 11-12.

### 2. The Tallahassee Grand Jury and The Public Integrity Section

While the government was pressing its Rule 60 motions in 1983, the United States Attorney for the Northern District of Florida was conducting a grand jury investigation of the evidence presented at the Petit Bois Island trial. The investigation ultimately was abandoned without bringing any indictments.

One of the unexplained coincidences of this case occurs on November 3, 1983, about five weeks after Nixon denied the last Petit Bois Island motion and at a time when the Tallahassee grand jury appears to have been losing momentum. On that date, Robert "Skip" Jarvis made an anonymous telephone call to the FBI office in Pascagoula, Mississippi to allege that Nixon was involved in an illegal financial arrangement with Wiley Fairchild, president of Fairchild Construction Co. in Hattiesburg, Mississippi.

Jarvis, who had worked for Fairchild until May 1983, also placed anonymous calls to the FBI on November 10 and November 17.

Jarvis alleged that Nixon had been included in an oil investment with Wiley Fairchild in return for Nixon's help in having a federal prosecution of Wiley's son, Drew Fairchild, transferred to state authorities. See Def. Ex. 10, p. 10. Jarvis has testified that he had been suspicious of the Fairchild-Nixon investment for two years before he called the FBI. Trial Tr. 357-66. There has been no satisfactory explanation for why he placed that call on November 3, 1983. See Tr. 445-48.

Jarvis' allegations ultimately were referred to the Public Integrity Section of the Criminal Division of the U.S. Department of Justice in Washington. Attorneys from the Public Integrity Section and FBI agents interviewed several witnesses, including Nixon, in April 1984. A grand jury was empanelled in Hattiesburg in July 1984. The grand jury was charged with investigating (i) Jarvis' allegations concerning Fairchild and Nixon, and (ii) allegations about the Petit Bois Island trial that had been abandoned by the Tallahassee grand jury.

### 3. The Prosecutions of Wiley Fairchild And Bud Holmes

The two key witnesses at Nixon's trial were Wiley Fairchild, who supposedly paid him an illegal gratuity, and former Forrest County District Attorney Paul H. ("Bud") Holmes, whose official actions allegedly were influenced by Nixon at

Wiley's behest. Before these two men were converted into government witnesses, however, they themselves were targets of the Hattiesburg grand jury.

(a) Wiley Fairchild -- Two months after it was empanelled, the Hattiesburg grand jury returned a two-count indictment against Wiley Fairchild, then 71 years old. The indictment charged him with paying an illegal gratuity to Judge Nixon through the oil investment and with perjury in his July 1984 testimony before the grand jury.

In November 1984, a plea agreement was reached between Wiley Fairchild and the government, calling for:

(i) a guilty plea on the gratuity charge;

(ii) dismissal of the perjury charge;

(iii) the government to make Wiley's cooperation known to the sentencing court, which resulted in a government recommendation that Wiley Fairchild not be sentenced to any jail time.

Wiley testified at trial that he knew that he could make a deal with the government if he had incriminating evidence about Nixon. Tr. 690-92.

Neither the government nor Wiley disclosed numerous other elements of the agreement and their later relationship. These facts were unknown by Nixon or his counsel until the preparations for this Motion were begun following denial of certiorari by the Supreme Court, see Fawer Declaration, Exhibit 2 and include:

(i) The statement by the lead federal prosecutor, Reid Weingarten, at the time of the plea agreement that he would drop the gratuity charge against Wiley Fairchild if he became convinced that there was no connection between the oil investment and the drug prosecution of Drew Fairchild. Weingarten refused to include that promise in the written plea agreement. Baltar Declaration, ¶ 4 (Exhibit 3 to this Memorandum).

(ii) Weingarten told Wiley Fairchild that he would help Wiley's son, Drew Fairchild, in any way that he could. Wiley Fairchild Declaration, ¶ 2; Baltar Declaration, ¶ 5. At the request of Drew's lawyer in early 1985, Weingarten thereupon brought a federal prosecution of Drew in order to head off a state prosecution that threatened to put Drew in prison for a much longer period than the ultimate federal sentence of six months, with two and one-half years suspended. Baltar Declaration, ¶ 6-7.

(iii) Weingarten told Wiley's lawyer what Wiley should say at his sentencing proceeding, and Wiley was "afraid not to say in Court what Mr.

Weingarten said I should say." Wiley Fairchild Declaration, ¶ 4 (Exhibit 4 to this Memorandum).

(iv) Before the Nixon trial began, John Baltar, who worked for Wiley Fairchild and was acting with Wiley's approval, provided Weingarten with the results of a survey of potential jurors that had been compiled for Wiley's defense. Baltar, with Wiley's approval, also helped Weingarten gather background information on potential jurors immediately before the Nixon trial began. Baltar Declaration, ¶¶ 8-10.

(v) During the trial, Weingarten came to Wiley Fairchild's office to rehearse Wiley's testimony. At Weingarten's request and copying from Weingarten's notes of the testimony, Baltar wrote out a list of questions and answers which were jointly developed at that meeting for Wiley Fairchild's testimony. See Baltar Declaration, Attachment 1. Weingarten asked Wiley to study this "script," and Wiley did so, and was even reviewing the script as he waited outside the courtroom to testify in the Nixon trial. Id., ¶ 11.

(vi) Throughout the conversations between Wiley and the prosecutors, they pressed him for a "smoking gun" on Judge Nixon. Wiley Fairchild Declaration, ¶ 5;

(vii) In view of these events, Wiley formed the justifiable conclusion that if Weingarten was satisfied with Wiley's trial testimony, Weingarten "would do everything he could to help me, including assisting in getting a pardon." Similarly, Wiley believed that if his trial testimony did not please Weingarten, "he would not help me." Wiley Fairchild Declaration, ¶ 6. Based upon that belief, Wiley asked Baltar to call Weingarten after the Nixon trial and request assistance in getting an executive pardon for Wiley. Weingarten replied to Baltar that he would be willing to help Wiley in any way he could, but not until the Judge Nixon case was completely concluded. Baltar Declaration, ¶ 12.

(b) Bud Holmes -- Holmes appeared before the grand jury in July 1984, September 1984, and February 1985. In late March 1985, Holmes and his attorney, Maurice Dantin, met with Weingarten. The federal prosecutor told Holmes that he would be indicted that week but that he "did not have to be indicted" if he would fill in some gaps in the investigation. Weingarten told Holmes that Holmes was a "savvy guy" and would understand what he meant. Holmes and Dantin both understood perfectly that Weingarten was offering not to indict Holmes if Holmes could provide incriminating evidence about Nixon. Holmes Declaration, ¶¶ 5, 6 (Ex. 5 to this Memorandum); Dantin Declaration, ¶¶ 2, 3 (Ex. 6 to this Memorandum).

Because Holmes knew no incriminating information about Nixon, he was indicted two days later on four perjury counts and one count of obstruction of justice. During the jury selection in Holmes' case in June 1985, a plea agreement was reached calling for Holmes to plead guilty to one count of contempt of court with all other charges dismissed. The government also agreed not to recommend a sentence longer than one year that, should the sentencing court decide to impose a term of imprisonment, "sentence of no more than one year's imprisonment would be an appropriate disposition of the case."

Following the plea agreement, Weingarten stated to Holmes that the prosecutor had thought that several counts of the original indictment probably did not provide a basis for conviction. Holmes Declaration, ¶ 7. The federal prosecutors also questioned Holmes in an attempt to connect Nixon with the developer of Petit Bois Island, John Stocks, and his associate, Eugene Lewis. Holmes told them he knew of no such connection. Id., ¶ 8.

4. Petit Bois Island, Again

Messrs. Stocks and Lewis had their own problems with the Hattiesburg grand jury. On October 31, 1985, the two Floridians were indicted by that grand jury. Stocks was charged with three counts of perjury and one count of obstruction of justice from the Petit Bois Island trial. Lewis was indicted for one count of aiding and abetting Stocks' alleged obstruction of justice, and one perjury count for his testimony before the Hattiesburg grand jury.

The perjury charge against Lewis concerned grand jury testimony that he did not recall signing a side letter allowing rescission of certain land sales contracts. As Lewis argued in a motion to dismiss that charge, which was filed on February 28, 1986, he was "set up" by the prosecutor on that charge. (Ex. 7 to this Memorandum.) As soon as Lewis left the grand jury room, the prosecutor announced to the grand jury that the government had such a rescission letter signed by Lewis. But Lewis was never confronted with the letter or asked any follow-up questions about it.

Lewis' Motion to Dismiss also recounts the substance of meetings between Lewis, his counsel, and prosecutors from the

Public Integrity Section on October 24 and 29, 1985. Lewis was informed at those meetings that he would be indicted unless he could provide incriminating evidence against Nixon. John Stocks has reported similar demands by the prosecutor. (Ex. 8 to this Memorandum). Both Stocks and Lewis were acquitted following a jury trial in the Northern District of Alabama in June 1986.

### 5. The Nixon Indictment

The Nixon indictment, handed up on August 29, 1985, charged (i) acceptance of an illegal gratuity from Wiley Fairchild in the form of the oil investment; (ii) perjury in denying that Nixon had discussed Drew Fairchild's case with Wiley; (iii) perjury in denying that Bud Holmes had discussed Drew's case with Nixon; and (iv) perjury in a final statement made by Nixon during his July 18, 1984 grand jury appearance, when he said that he had not attempted to influence the prosecution of Drew Fairchild.

Because the jury acquitted Nixon on Counts I and II, we will not address them directly. In order to appreciate the charges in Counts III and IV, however, additional factual background is necessary.

#### (a) Nixon's Investment With Wiley Fairchild

The investigation focused on Nixon's 1980 investment in three oil properties held by Wiley Fairchild. Nixon, who has seven children, had asked friends about possible investments. Tr. 1451-53, 1472-75. In 1979 he discussed with a long-time acquaintance, Carroll Ingram, possibly investing with Wiley. Tr. 1476-77.

After consulting with Wiley, Ingram reported that Nixon could invest in three oil properties for $9,500. Tr. 1483-84; 1036-37. [2] The relevant deeds were not executed until February 1981, but were dated February 1980, when the agreement had been reached. Tr. 1044, 1118, 1053, 593-94. No trial witness suggested any sinister reason for that delay in executing the deeds.

(b) Drew Fairchild's Legal Problems

Several months after the investment, in August 1980, federal agents seized a plane full of marijuana at the Hattiesburg Airport. Drew was not among those indicted by the federal grand jury on August 19, 1980, but he discussed his fear of criminal charges with a lawyer, Bill Porter. Porter set up a meeting with District Attorney Holmes, Tr. 137-40, who recommended that Drew try to cut a deal with the U.S. Attorney in Jackson, George Phillips, and arranged an appointment with the U.S. Attorney. Drew agreed to a federal plea bargain calling for five years of probation and a $15,000 fine, which was set forth in a memorandum dated November 19, 1980. Ex. G-2; Tr. 141-44.

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[2] Wiley took promissory notes from Nixon for the initial price, and Nixon paid the notes in 1982. Tr. 1519, 1527. Two of the three oil properties turned out to be profitable, while the third was unsuccessful.

Four months later, Porter sued Drew for a $10,000 fee allegedly due for handling the plea bargain. Ex. D-1. In July 1981, Wiley paid Porter $2,669.19, Ex. D-2, but Porter remained dissatisfied and complained to Bud Holmes about the unpaid fee. Tr. 732-34, 796, 837.

Holmes offered to prosecute Drew to help collect Porter's fee. He called U.S. Attorney Phillips and suggested that he take over Drew's case, since state and federal authorities both had jurisdiction. Tr. 732. Holmes admitted that collecting Porter's fee was "the primary motive" for taking over Drew's case, Tr. 845, 936, and said he explained that motive to the U.S. Attorney. Tr. 732. At the time Holmes took over the case, the U.S. Attorney had concluded that Drew had breached the plea agreement by not cooperating truthfully. Tr. 218-21.

On August 26, 1981, Drew was indicted by a state grand jury. Wiley got the message. On September 3, Drew was arraigned in state court and Wiley paid Porter $7,500. Ex. D-3; Tr. 848-49.

Even though the U.S. Attorney thought Drew had breached the federal plea agreement, Holmes agreed to a similar plea bargain. Drew pled guilty in state court in January 1982. Until this point, there is no suggestion that Nixon had any involvement in or knowledge of Drew's problems. Drew's sentencing was delayed by court order on five occasions in 1982 because of Drew's health problems and also so that Drew, before being sentenced, could testify against the pilot of the seized plane, who was then a fugitive. Tr. 851-58, 861-62; Ex. G-6. The FBI located the pilot in Florida in October and extradition proceedings began. Tr. 1343-44.

On December 23, 1982, District Attorney Holmes moved in state court to have Drew's case "passed to the files," which tolls the state requirement that sentencing be completed in a reasonable time. Tr. 858-59. At trial, Holmes gave several reasons for his action. The "big motivating thing," he explained, was a political concern raised by Drew's lawyer, Bill Porter, because the local circuit judge was about to be replaced by Dickie McKenzie (Tr. 754):

> Judge McKenzie was going to be able to have the power to totally ignore any kind of plea bargain we had and go ahead and sentence him to the full 5 years . . .. Bill [Porter] was afraid that's exactly what Dickie was going to do, Judge McKenzie was going to do. So he was fussing about it.

Holmes testified that passing a case to the files is a legally meaningless act, Tr. 924, and the federal prosecutor told the jury "it was a legally absurd, pointless gesture." Tr. 1853. Thirty-three days after Drew's case was passed to the files, the pilot was returned to Mississippi and Drew's case was immediately restored to the active docket. Ex. D-7, [A-59-62]; Tr. 755.

### (c) Nixon Learns About Holmes' Blackmailing

Wiley was distressed that Porter and Holmes had extorted Porter's fee from him. After Wiley paid Porter's fee, he was visited by Robert Royals, one of the alleged marijuana smugglers and a "very close friend" of Bill Porter's. Tr. 151, 626. Royals told him that Porter had said that "if Drew will get up off his money he'd come clear of this thing," and that "if [Drew's] old man had knew his son got his tail in the crack, he'd get up off his money." Tr. 480, 626.

Some time later, Wiley told Nixon "that they [including Holmes] was trying to blackmail me and I wasn't going to be blackmailed." Tr. 484. Wiley recalled telling Nixon, "if they will go ahead and prosecute Bob Royals, they won't hear a damn word out of me. He's guilty and my son's guilty, but I just don't like them picking on my son because I got money." Id. Wiley said that Nixon said nothing in response, Tr. 484, and that he never asked Nixon to do anything for him. Tr. 641, 543.

Nixon had expected to visit Holmes' farm later that day. Tr. 1530. According to Holmes, [3] Nixon said, "Bud, I never would have asked you to do anything against your oath of office, never ask you to do anything embarrassing to you, wouldn't ask you to do anything wrong." Tr. 736-38. Holmes continued (id.):

> [Nixon] said, I was out at Mr. Fairchild's and he asked me to put in a good word for his boy, or would I say something to you about Drew. -- I think, I don't think he said Drew, I think he said his boy. I said, you know, well, I don't know. I don't know. What is it you want? You want an apology? I don't know. What does the man want?

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[3] Nixon's description of this conversation conflicted in several material respects from that of Holmes, but in this Memorandum we take Holmes' testimony as true.

Q. Are you saying did you say that to Judge Nixon?

A. Yeah, that was about my response. I can't remember this, because as I recall this was like in May of 82, you know, when this occurred. But that was about my response, I mean, I was feeling rich and good-looking and, you know, that would have been my typical type answers.

> He said I'm not asking you to do anything. I'm just saying that Mr. Fairchild asked me to put in a good word.
>
> * * * *
>
> So I took it on myself, said, well, judge, hell, I'm district attorney, I'll pass it to the files. And he said no, I'm not asking you to do that. Now, I'm not asking you to do anything now.

Holmes told Nixon that he had worked out a plea bargain with Drew. Tr. 739. According to Holmes, Nixon asked if Wiley knew about the plea bargain, and Nixon then told Wiley about it on the telephone. Id..

Holmes then told Wiley that "I want Judge Nixon to have credit for helping the boy." Tr. 740. Holmes testified that he was "misleading" Wiley "because I already had the arrangement worked out with Bill Porter." Id. Holmes' Declaration notes that it was not unusual for him, as district attorney, to accord credit to others for influencing a decision when Holmes actually had not been influenced at all by the other person. Holmes Declaration, ¶¶ 3, 4.

Holmes claimed that he also told Wiley that he would pass Drew's case to the files, id., although Wiley denied that

Holmes made that statement. Tr. 663. Holmes admitted at trial, however, that Nixon had not asked him to pass the case to the files. Tr. 739-40. In his Declaration, Holmes explains further that he did not think Nixon was asking for any favors for Drew, but was "passing on to me the information that Wiley Fairchild had been asking about his son's case. I would have expected any friend of mine to mention to me that a member of the community had been asking about a case for which I was responsible." Holmes Declaration, ¶ 2. Seven months later, Drew's case was passed to the files, and Holmes said that the telephone conversation with Wiley was one of the reasons for his actions. Tr. 751-52. [4]

### (d) Interviewing Nixon: April 1984

In April 1984, Skip Jarvis made two false allegations to a federal prosecutor: that Nixon's investment had been tied to Drew's federal plea bargain and that Nixon had steered Drew's federal case to state court. Tr. 316-18, 347. On the following day, Nixon submitted to a tape-recorded interview. After spending more than half of the interview on the oil investment, the prosecutor focused Nixon's attention on the federal role in prosecuting Drew (Interview Tr., 28-29) (emphasis added):

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[4] Carroll Ingram, who helped set up Nixon's investment, testified that Nixon said he had talked to Bud Holmes about Drew at Wiley's request. Ingram testified that Nixon never said why he talked to Holmes, and that "it was really a passing comment, an understated thing that wasn't a full discussion about it." Tr. 1070. Ingram's testimony thus adds nothing to Holmes' description of the conversation with Nixon.

**Prosecutor:** Now, the obvious question, Judge, did [Bud Holmes] ever discuss the DREW FAIRCHILD drug case with you?

**Nixon:** Not to my recollection. I think I would recall it --

* * * *

**Prosecutor:** I tell you that ah, the airport bust was August, 1980. Ah, that, I tell you that originally the case was a federal case, got passed to HOLMES.

**Nixon:** How did it get passed, what, what happened?

**Prosecutor:** Well --

**Nixon:** I don't know anything about it --

**Prosecutor:** Frankly, that's --

**Nixon:** I'm, I'm interested. I'm curious --

**Prosecutor:** Frankly, that's a very good question, and it's quite a ah, what we're looking at here. . . .

When Nixon asked "exactly what it is alleged that I'm supposed to have done or not done," the prosecutor responded that he had "no information" that "the case was in your court, that you did anything wrong with it." Id. at 41. The prosecutor explained that Drew's co-conspirators were indicted on federal charges, but "DREW FAIRCHILD was never indicted. His case got picked up by HOLMES, as I explained." Id. at 42.

The interviewers described Drew's federal plea bargain and the transfer of Drew's case to Holmes. Nixon responded, "Well I'm puzzled. I, I just don't know anything about it. I, I'm, I'm, I'm learning something about it now." Id. Nixon then asked again about the transfer of Drew's case from federal to state authorities. Id. at 46.

(e) Grand Jury Testimony

Nixon voluntarily appeared before the federal grand jury in July 1984, and the questioning again focused on the investment with Wiley. When Nixon was asked about the federal proceedings before Judge Cox concerning Drew's co-conspirators, he replied that he knew nothing about those cases. Grand Jury Tr., at 46.

The prosecutor pointed out that Drew was indicted by the state, thereby directing Nixon's attention to how Drew's case ended up in state court. Id. at 45-46. After exploring Nixon's hazy recollection that there was criticism of the state's conduct of Drew's case, the prosecutor asked whether Holmes "ever discuss[ed] the Drew Fairchild case with you"? Id. at 47-48. Nixon responded that he did not recall such a discussion. Id. at 48.

After answering several questions concerning contact with Wiley or with the U.S. Attorney about Drew, Nixon explained that the Justice Department, not a federal judge, determines who is prosecuted "in federal court." Id. at 50 (emphasis added). Again, the testimony reflected Nixon's understanding that the prosecutor's questions concerned why Drew was not indicted in federal court.

Towards the end of his testimony, Nixon was asked if he had "anything you want to add." Nixon made a lengthy and emotional statement which included two sentences that were the basis for the second perjury conviction. Id. at 75-79.

Finally, Nixon reiterated that he thought the questioning had related to the "handling" of Drew's case in federal court or by federal authorities, since that "would be the only possible charge of a crime herein, federal crime." Id. at 96. Nixon plainly had in mind the gratuities statute (18 U.S.C. § 201(g)), which would be violated only if he had interfered with federal action concerning Drew. [5/]

### 6. The Federal Prosecutors Save Drew Fairchild From State Prison

Ironically, by early 1985 Drew Fairchild still had not been sentenced in state court. The federal prosecutor, Weingarten, promised Wiley he would help Drew. Baltar Declaration, ¶ 5; Wiley Fairchild Declaration, ¶ 2. Weingarten wrote a letter to the new District Attorney, S. Glenn White, on Drew's behalf to try to save Drew's no-prison plea bargain negotiated by Bud Holmes. Baltar Declaration, ¶ 7; see State v. Fairchild, NO. 10,041 (Forrest County Circuit Court), Transcript of Sentencing Hearing on July 8, 1985, at 81-82, 84-85.

But when Judge McKenzie of the Circuit Court announced that he would not accept that plea agreement and would sentence

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[5/] The jury instructions specified that the gratuities statute could not be violated by influencing a state court action such as Holmes' passing Drew's case to the files. Tr. 2090.

Drew to a long stretch in prison, Weingarten adopted an alternative plan to help Drew. He arranged to indict Drew on parallel federal charges, Baltar Declaration, ¶ 6, after Drew's lawyers got the state plea agreement thrown out by Judge McKenzie. Drew's lawyers ultimately urged District Attorney White and the state court to accept any federal sentence as full satisfaction of the state charges.

Throughout this period, White made clear to Weingarten that Drew should be sentenced to time in jail, and Weingarten stated to White that Drew was a cooperating witness to whom consideration should be extended. Ultimately, the state court accepted a plea agreement that allowed Drew's state charges to be satisfied by any federal prison time Drew served. Then Drew was sentenced to six months by the federal court, of which he served four and one-half months. Tr. 124-25.

## III.

## GROUNDS FOR VACATING THE CONVICTION

Under § 2255, a defendant may attack a conviction or sentence on the basis of constitutional error, jurisdictional error, or error presenting a "fundamental defect which inherently results in a complete miscarriage of justice." United States v. Addonizio, 442 U.S. 178, 185 (1979) (quoting Hill v. United States, 368 U.S. 424, 428 (1962)). By this Motion, Nixon raises five constitutional errors, as well as a parallel Jencks Act violation that may be remedied on collateral attack or by treating the claim as a motion for new trial on newly discovered evidence. Several of these errors have not previously been raised because they were concealed by the government at trial, and thus they may still be raised by this Motion. *See* *Brown v. United States*, 480 F.2d 1036, 1038 (5th Cir. 1973). This Memorandum will discuss each error in turn.

### A. The Government Failed to Disclose The Promises and Inducements Given To Wiley Fairchild

As disclosed for the first time in the Declarations of Wiley Fairchild and John Baltar, the government concealed several of the inducements for cooperation it had extended to Wiley. Equally, only the prosecutors knew of the extra assistance that Wiley provided to the government. These matters include (i) Weingarten's unwritten promise to drop the gratuity charge if he became convinced that it was unfounded; (ii) Weingarten promising to Wiley to help Wiley's son, Drew; (iii) Weingarten dictating Wiley's statement at sentencing and Wiley's fear not to say what Weingarten said he should say; (iv) Wiley allowing his assistant, John Baltar, to assist the prosecutors in selecting the jury; (v) Weingarten and Wiley's agreement on Wiley's trial testimony and their joint preparation of a script for that testimony; and (vi) Wiley's belief, based on everything Weingarten had said and done, that Weingarten would help him get a pardon.

The Supreme Court has held that a defendant is entitled to a new trial if a government witness does not accurately inform the jury of the promises made to him by the prosecution in return for his testimony. Giglio v. United States, 405 U.S. 150 (1972). Giglio held that a new trial is required if the false testimony could have "in any reasonable likelihood affected the judgment of the jury." Id., at 154, quoting Napue v. Illinois, 360 U.S. 264, 271 (1959). As the Fifth Circuit held in Reagor v. United States, 488 F.2d 515, 516 (5th Cir. 1973) (per curiam), a "serious challenge" to the credibility of a key witness "would have a 'reasonable likelihood' of 'affecting the judgment of the jury.'" See United States v. Bagley, 105 S.Ct. 3375, 3384 (1985) (new trial required when "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different"). Even when a witness was only one of five identification witnesses in a bank robbery conviction, undisclosed government promises of leniency to that single witness required a new trial. Teague v. United States, 499 F.2d 1381, 1385 (7th Cir. 1974).

In a pretrial Motion for Production of Exculpatory Evidence and For Disclosure of Impeaching Evidence, Nixon sought disclosure of "any and all consideration or promises of consideration given to or on behalf of any witness, or expected or hoped for by any witness." In an Order signed on December 24, 1985, the District Court granted that part of the Motion in its entirety, stating (emphasis added):

> Defendant requests information about formal or informal grants of immunity or the placement in the Witness Protection Program or anything else that has been given or promised to any of the government's witnesses. The government shall supply such information to the defendant.

The government plainly failed to comply with this order since it never disclosed its conditional promise to Wiley to drop the gratuity charge or its promise to Wiley to help Wiley's son, Drew. Indeed, the record reveals.[5] a pernicious web of intimidation and inducements that was used to enlist the cooperation of this admittedly scared, elderly man.

There can be no dispute concerning the significance of Wiley's testimony. Only three witnesses could testify directly about the central events on the perjury counts -- Nixon, Holmes, and Wiley. Any increased ability to attack Wiley's credibility certainly would have had a reasonable likelihood of changing the jury's vote on Counts III and IV, especially in view of the possibility that the jury returned a compromise verdict and the deeply equivocal nature of the government's proof.

The government's nondisclosures about Wiley are particularly disturbing because the prosecutor stressed repeatedly in his closing argument that the jury should believe Wiley's testimony because he supposedly had no remaining incentive to assist the government. (Tr. 1850; 1967) (emphasis added):

> Wiley Fairchild never moved off that point. What's it to him at this point in time? There is no hook into Wiley Fairchild, he's not being prosecuted for anything at this point. Was it not simply an effort by this man to give his best testimony? If you believe that, if you believe Wiley Fairchild on that point, a crucial point we submit, it puts the lie to Judge Nixon's testimony.
>
> . . . . .
>
> What hammer does the United States have over Wiley Fairchild at this time? We gave that lever up. We could have deferred that sentence. We could have kept him unsentenced until he testified.
>
> Was Bud Holmes sentenced? Yeah, Bud Holmes was sentenced. What leverage did the United States have over Bud Holmes. I'll tell you what leverage we had, we have the leverage every prosecuting attorney has for perjury. The same with Wiley Fairchild. But that's the only leverage. We gave up the leverage. We had no leverage . . . .

At the same time that the prosecutor spoke those passionate falsehoods to the jury, Wiley Fairchild was patiently waiting to ask Weingarten to make good on his promise of help if the gratuity count proved baseless (as it did), secure in the knowledge that Weingarten already had made good on his earlier promise to Wiley to do everything he could for Drew. But Nixon, the trial court and the jury knew nothing about those promises or that leverage that the government still held over Wiley Fairchild.

Under Brady v. Maryland, 373 U.S. 83 (1963), a defendant has a due process right to evidence favorable to the defense when a specific request for such information has been made. This right includes impeachment evidence as well as exculpatory evidence. United States v. Bagley, 105 S.Ct. 3375, 3380 (1985).

Defense counsel made a specific request for all evidence of government promises or assistance to witnesses, and disclosure of that material was ordered by the trial court. That order was flouted not only by noncompliance, but also through statements in closing argument that sought positive advantage from the prosecution's concealment of impeaching evidence. See United States v. Valentine, 820 F.2d 565, 571 (2d Cir. 1987) (reversal required when, inter alia, prosecutor's closing argument emphasized government's misrepresentation of undisclosed grand jury testimony). In these circumstances, the government's nondisclosure of its promises and inducements to Wiley Fairchild require that the convictions be vacated and a new trial ordered.

### B. The Government Allowed Incomplete And Misleading Testimony By Wiley Fairchild And By Drew Fairchild Which Denied Nixon A Fair Trial

Under Napue v. Illinois, 360 U.S. 264 (1959), a prosecutor may not sit idly by while a witness testifies incompletely or misleadingly about plea agreements or other arrangements between the witness and the government. "That such reprehensible conduct is not only improper but frequently results in a violation of the constitutional right to a fair trial is established beyond dispute." Washington v. Vincent, 525 F.2d 262 (2d Cir. 1975), cert. denied, 424 U.S. 934 (1976). This doctrine applies even if the testimony involved "matters only affecting the credibility of the witness." *Dupart v. United States*, 541 F.2d 1148, 1150 (5th Cir. 1976).

### (a) *Wiley*

When the prosecutor questioned Wiley about his plea agreement, he elicited an incomplete and misleading description of the inducements and cooperation between Wiley and the government (Tr. 526-27):

> Q. And what happened in your case, Mr. Fairchild?
>
> A. Well, I had a -- I pleaded guilty to the gratuity and the government dropped the charge of perjury.
>
> Q. Was there a plea agreement?
>
> A. Yes.
>
> Q. And was the plea agreement between you and the government?
>
> A. Yes.
>
> Q. Where did you plead guilty, do you recall?
>
> A. In New Orleans.
>
> Q. Do you recall what judge?
>
> A. Judge Carr.
>
> Q. And did there come a time for sentencing?
>
> A. Yes.
>
> Q. What sentence did you receive?
>
> A. Two years with twenty-two months suspended, and two months in a halfway house.
>
> Q. Where was the halfway house?
>
> A. Jackson.

Q. Have you served your sentence?

A. Yes.

Q. What did the government recommend to Judge Carr as far as your sentence was concerned?

A. They recommended that I not be incarcerated.

Q. And Judge Carr did what?

A. He sentenced me to two years, suspended twenty-two months.

Q. How much time did you actually do?

A. Well, technically two months, but the way it was, come about I checked in on a Friday morning, got credit for Friday, Saturday and Sunday, and there was some holidays and stuff in there. I think I spent 39 nights up there.

Q. In Jackson?

A. Yeah.

On cross-examination, Wiley admitted that he knew that he could get a deal with the government if he provided information against Nixon. Tr. 692. Defense counsel impeached Wiley with a transcript of a testimonial proffer Wiley had made during the plea bargaining in November 1984. Tr. 694-704. Indeed, defense counsel demonstrated that the prosecutors allowed Wiley to tell the grand jury about a rumor that Judge Nixon had been bribed in a case involving Billy Shows, even though the prosecutors knew at the time of Wiley's grand jury appearance that Judge Nixon had not even handled the Shows case. Tr. 707. Defense counsel also introduced a letter from Weingarten to

Wiley's lawyer agreeing to make Wiley's cooperation known at time of sentencing. Tr. 709-10.

But neither direct nor cross-examination revealed many of the elements of Wiley's relationship with the government, including Weingarten's conditional promise to drop the gratuity charge, Weingarten's promise to help Drew, Wiley's help for the government in jury selection, and the joint preparation of the script for Wiley's trial testimony. Defense counsel could not impeach Wiley with those matters because the government had concealed them and then presented through Wiley's testimony a misleadingly incomplete picture of them.

### (b) Drew

Although the prosecutors were trying to convict Nixon of illegally helping Drew Fairchild avoid drug charges, they themselves worked energetically to save Drew from the lengthy state prison sentence threatened by Circuit Court Judge McKenzie. See pp. 25-26 supra. First, Weingarten wrote a letter in support of Drew to try to salvage the original plea bargain struck by Bud Holmes in 1981. Baltar Declaration, ¶ 7. When Judge McKenzie still refused to accept the plea bargain, Weingarten agreed to charge Drew federally in order to preempt the state prosecution. Glenn White, Holmes' successor, made clear that the state authorities wanted Drew to go to prison, while Weingarten stressed to White the need to extend consideration to Drew as a cooperating witness.

At Nixon's trial, Drew's testimony on this sequence was seriously incomplete and misleading. On direct examination, he said that no promises had been made to him "with respect to that [federal] indictment," even though Weingarten had promised Wiley to help Drew in any way he could, Tr. 123. On cross-examination, defense counsel brought out that the federal indictment had been initiated by Drew's lawyers to try to head off the threatened state prison term, Tr. 126-30. But Drew also insisted -- perhaps because he personally did not know otherwise -- that "Mr. Weingarten didn't have anything to do with what I worked out with Judge McKenzie," Tr. 131. In view of Weingarten's continued pressure on District Attorney White to go easy on Drew, that testimony was, at a bare minimum, seriously incomplete.

On redirect, one of the prosecutors explained in a sidebar conference the need to "clarify" the suggestion by defense counsel "that the federal government had something to do with this deal of Judge McKenzie." Tr. 202. The prosecutor then asked Drew (Tr. 204):

> Q: In fact at your sentencing before Judge Carr did the federal government recommend that you not go to prison?
>
> A: No, just the opposite.
>
> Q: And that was Mr. Weingarten, was it not?
>
> A: Mr. Weingarten.

But the transcript of Drew's sentencing hearing reflects that Weingarten called Drew a "nice man" whose cooperation had been "complete." And Weingarten made no recommendation that Drew receive any time in prison. See United States v. Wiley Fairchild, No. 85-00005H (S.D. Miss.) (Transcript of July 11, 1985). Drew's inaccurate testimony was then compounded when the prosecutor asked, "Has the federal government cut you any breaks in this investigation?" Drew replied, unbelievably, "No." Tr. 202 (emphasis added).

Once again, the government deceived the court and the jury with incomplete and misleading testimony. Everything the federal government did with respect to Drew Fairchild in 1985 was expressly designed to "cut" him "breaks." First the government tried to save the no-prison deal in state court; then it stepped in to shield Drew from the lengthy state prison sentence threatened by Judge McKenzie; then it encouraged District Attorney White to extend consideration to Drew.

There is a terrible irony here. Judge Nixon has been sentenced to five years in prison for denying any attempt to influence Bud Holmes about Drew's case, even though Holmes himself denies that Nixon attempted to influence him. Yet the very prosecutors who secured Nixon's conviction did influence Drew's case to ensure more lenient treatment, and then secured Nixon's conviction by eliciting Drew's misleading and inaccurate testimony denying that they had helped him. Who presented the truth? The prosecutors who deceived the trial court about their role in protecting Drew? Or Judge Nixon who accurately denied influencing Bud Holmes to help Drew? Because of the prosecutors' deception at trial, however, that question could not be raised fully in Nixon's defense at trial.

Chief Justice Warren eloquently explained why due process is offended when a prosecutor sits quietly while a witness inaccurately or misleadingly testifies about the government's promises and his cooperation (Napue, 360 U.S. at 269):

> The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend.

This doctrine is also triggered by testimony that, although perhaps not false on its face, gives the jury a "false impression" because it is misleading or substantially incomplete. Alcorta v. State of Texas, 355 U.S. 32 (1957) (state habeas proceeding). Because Wiley's testimony misleadingly concealed the promises by the government and his cooperation with the government, and because Drew's testimony misleadingly concealed the government's extensive efforts to save him from state prison, the convictions must be vacated.

### C. Non-Disclosure Of Wiley's "Script" For Testifying Violated The Jencks Act And Due Process

Jencks Act violations, although not presenting a constitutional issue, may be raised on a § 2255 motion. Krilich v. United States, 502 F.2d 680 (7th Cir. 1974), cert. denied, 420 U.S. 992 (1975). [6] In addition, the prosecutors' conduct in this matter violated basic precepts of due process, which are properly raised under § 2255. Alternatively, this Court may consider the Jencks Act issue as a Motion for New Trial based on newly discovered evidence under Federal Rule of Criminal Procedure 33. See Mitchell v. United States, supra. In either posture, the prosecutors' failure to disclose to defense counsel the script that Weingarten and Wiley prepared requires a new trial.

The Jencks Act provides that a defendant is entitled to any "statement" of a government witness after the witness has testified on direct examination. The term "statement" includes any "written statement made by said witness and signed or otherwise adopted and approved by him." 18 U.S.C. § 3500(e)(1). The "script" for Wiley's testimony plainly falls within that definition. The prosecutor and Wiley reviewed questions to be asked and Wiley's answers, which were written out by

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[6] But see Wilson v. United States, 554 F.2d 893 (8th Cir. 1977), cert. denied, 434 U.S. 849 (1977) (holding Jencks Act claim not reviewable on § 2255 motion). We have not found a Fifth Circuit decision on this question.

Weingarten. As described in the Baltar Declaration, Baltar then wrote down Wiley's script based upon the prosecutor's notes. Significantly, the script was created at the request of the prosecutor, who asked that Wiley study it. Wiley studied the script as late as the day of his testimony, as he waited in the jury room to testify. Within the meaning of the Jencks Act, Wiley plainly adopted the script which was taken down by the prosecutor. See Campbell v. United States, 373 U.S. 487, 490-91 (1963). Indeed, the entire purpose of the script-writing session was to define precisely what Wiley's actual statement and testimony was.

In its pretrial Order dated December 24, 1985, the District Court ordered that "Documents relating to those individuals who will be witnesses shall be produced pursuant to the Jencks Act . . . ." Under this Order, Wiley's script should have been produced. As a tool for cross-examination, the script would have been a powerful weapon for the defense.

First, there is a material discrepancy between the script and Wiley's trial testimony. In the script, Wiley says that when he became upset about being "blackmailed" by Holmes, he called Nixon directly to ask Nixon to come to his office. "I tried to call Carroll [Ingram] to get the judge up here and was unable to get Carroll. I called the judge direct and told him I wanted to discuss something with him but not over the phone." Baltar Declaration, Attachment 1, p. 1.

But at trial Wiley testified that he called Carroll Ingram to ask him to have Nixon come out to the Fairchild office. Tr. 646. This discrepancy calls into question Wiley's recollections as a general matter. Moreover, it suggests that the government was attempting to shape that recollection to sound more sinister by cutting out any intermediary between Wiley and Nixon, and also was trying to get Wiley's testimony to correspond to that of Carroll Ingram, who denied helping Wiley contact Nixon on this matter.

More significant, however, was the mere existence and use of the script. As noted above, prosecutor Weingarten passionately argued to the jury that Wiley's testimony should be believed because the government had no "hammer" over him, no "leverage" on him. See p. 30 supra. Yet Weingarten himself had prepared the script of Wiley's direct testimony, had given it to him, had told him to study it, and Wiley had been studying that script diligently the day he testified at trial.

Other remarks by Weingarten in closing argument highlight the importance of this script. While defending certain discrepancies in the dating of key events by government witnesses, the prosecutor argued that Holmes' testimony did not correspond exactly with Wiley's because "it was his recollection, not a script, not a play, not a soap opera; it's his real life, fresh (sic) and blood recollection. I suggest we'll examine a carefully crafted script in a minute." Tr. 1860 (emphasis added). Then, discussing Nixon's testimony, the prosecutor called Nixon's testimony "carefully crafted, carefully rehearsed." Tr. 1871 (emphasis added).

By improperly withholding Wiley's script from the defense while defending Wiley's recollection as "not a script," and simultaneously accusing Nixon of presenting "a carefully crafted script," the prosecutor intentionally deceived the jury. That is precisely the sort of misconduct that the Jencks Act is designed to prevent and that due process cannot abide. "The command of the statute is thus designed to further the fair and just administration of criminal justice, a goal of which the judiciary is the special guardian." Campbell v. United States, 365 U.S. 85, 92 (1963). Unless the wrongful withholding of Wiley's script is deemed harmless, Nixon is entitled to a new trial. See United States v. Welch, 810 F.2d 485, 491 (5th Cir. 1987), cert. denied, 108 S.Ct. 350 (1987).

### D. The Prosecutors Set An Illegal Perjury Trap For Nixon

Courts increasingly have realized that prosecutors, especially in high-profile investigations of public officials, may improperly use the grand jury to trap witnesses in perjury. In People v. Tyler, 413 N.Y.S. 2d 295, 299 (1978), four perjury counts against a state judge were dismissed because the prosecutors had set a perjury trap.

> Thus, where a prosecutor exhibits no palpable interest in eliciting facts material to a substantive investigation of crime or official misconduct and substantially tailors his questioning to extract a false answer, a valid

> perjury prosecution should not lie (see Brown v. United States, 8th Cir., 245 F.2d 549, 554). Since no legitimate investigatory function is discernible in questioning designed primarily or solely to support a perjury prosecution against the witness, it cannot be said that the responsive testimony, albeit false, frustrates any authorized purpose of the Grand Jury.

See People v. Rao, 425 N.Y.S. 2d 122, 129, 73 A.D. 2d 88 (2d Dept. 1980) (dismissing perjury conviction when prosecutors "tailored their questions solely to entice and entrap [the witness] into giving false answers"); State v. Reidinger, 64 N.J. 41, ____, 312 A.2d 129, 134 (1973) (dismissing perjury charge when, due to "trickery," witness was "allowed to walk into a waiting charge of perjury"); United States v. Thayer, 214 F.Supp. 929 (D. Colo. 1963) (same for SEC witness); United States v. Cross, 170 F.Supp. 303 (D.D.C. 1959) (same for congressional witness); United States v. Icardi, 140 F.Supp. 383 (D.D.C. 1956) (same for congressional witness); but see United States v. Simone, 627 F.Supp. 1264, 1267-72 (D. N.J. 1986) (denying perjury trap defense since witness had notice of factual areas to be covered and that he was subject of investigation).

Because the legal system deplores perjury, the courts do not lightly dismiss perjury charges due to prosecutorial misconduct. The perjury trap decisions reflect a sensitive understanding of the complex circumstances that make a perjury trap inviting to prosecutors and deadly to witnesses. As one commentator noted, "The awesome powers of investigating grand juries, the limited rights of witnesses, the secrecy of the interrogation, and the harsh intolerance of perjured testimony, all provide a natural setting for oppression and deceit." Gershman, "The 'Perjury Trap'," 129 U.Pa.L.Rev. 624, 626-27 (1981).

### 1. Building The Perjury Trap: Prosecutorial Deceit, Ambiguous Questions And No Follow-Up

In setting the perjury trap, a prosecutor often must deceive the witness. The prosecutor may conceal that the witness is a target of the investigation, e.g., United States v. Jacobs, 547 F.2d 772 (2d Cir. 1976), cert. dismissed, 436 U.S. 31 (1978), or he may withhold from the witness material information about the subjects under investigation, e.g., Reidinger, supra.

The questions that elicit the alleged perjury are critical, and will indicate a perjury trap. For example, "The dismissal of a witness or the termination of a line of inquiry once a perjured statement has been obtained strongly supports a conclusion that genuine information was not the prosecutor's objective." Gershman, supra, at 690. Similarly, an ambiguous question like "'Do you know A?' 'Were you involved with B?' 'Did you discuss C?' seems superficially innocuous," but is sufficiently vague "to trap the unwary or careless witness." More specifically, "a pattern of narrow, tightly worded questions followed by a broad, arguably ambiguous question might be misleading." Id. at 693 (emphasis in original).

The central issue is whether the prosecutor's questions were designed to acquire information or were designed to set up a perjury count. This analysis follows the Supreme Court's emphasis in Bronston v. United States, 409 U.S. 352, 358-59 (1973), on the questioner's responsibility to conduct a "probing, prying, pressing" interrogation that will "flush out the whole truth with the tools of adversary examination." If the prosecutor's ambiguous question sets up the possible perjury count and the prosecutor then immediately changes the subject, the witness may well have been trapped.

### 2. The Perjury Trap For Nixon

The prosecutor in this case set the perjury trap by first deceiving Nixon during an April 1984 interview in the judge's chambers. The investigation was initiated because of an Skip Jarvis' allegation, that Wiley Fairchild paid off Nixon to "steer" the Drew Fairchild case from federal court to state court. Tr. 316-18, 327, 347, 359. At the interview, Nixon asked if the prosecutor knew of any connection between Nixon and Drew Fairchild, but the prosecutor replied, "I can assure you, we have no information to that effect." Def. Ex. 43A, p.20. Later in the interview, the prosecutor was even more reassuring (id. at 50):

> Well, I'll tell you this. We have no information from any source that in any untoward way you effected the disposition of the case. I mean, that says it all, doesn't it?

Based upon those false assurances and without any formal notice that he was the target of the investigation, Nixon, as a sitting federal judge, felt an obligation to appear voluntarily before the grand jury. The questioning followed a standard perjury trap format. For more than forty pages, the prosecutor thoroughly questioned Nixon about his investment with Wiley Fairchild. Then the prosecutor sprang the trap, asking the innocuous-seeming and ambiguous question in Count III. The prosecutor knew what Nixon's responses would be since the identical questions were asked during the April interview:

| | April Interview<br>(Def. Ex. 43A, p. 28) | | July Testimony |
|---|---|---|---|
| Q: | Now, the obvious question, Judge, did [Bud Holmes] ever discuss the DREW FAIRCHILD drug case with you? | Q: | Did [Bud Holmes] ever discuss the Drew Fairchild case with you? |
| A: | Not to my recollection, I think I would recall it -- | A: | No, not to the best of my recollection. I think I would recall it if he had. |
| Q: | Okay. | | |
| A: | If he had. | | |

Having nailed down his potential perjury charge, the prosecutor quickly changed the subject, turning back to questions about Wiley Fairchild and the investment. He asked no follow-up questions to probe the Nixon-Holmes relationship, or to try to refresh Nixon's recollection about the Drew Fairchild case. Based on the April interview transcript, the prosecutor knew exactly what question to ask to set up the possible perjury count. He set the trap, sprang it, and changed the subject.

We do not contend that the perjury trap was the sole purpose for questioning Nixon. The prosecutor hoped to build a corruption case, but totally failed to do so. The prosecutor had the foresight -- and the willingness to abuse the grand jury process -- to build a perjury trap as a "safe harbor" if the substantive investigation fizzled. Based on the April interview, the prosecutor had no legitimate reason to ask Nixon at the grand jury whether Nixon recalled discussing the Drew Fairchild case with Bud Holmes -- at least he could not ask the question without adding "pressing, probing" inquiries designed to explore the matter fully. The prosecutor knew that Nixon had no such recollection, and that his testimony would not advance the substantive investigation. That testimony might, however, place Nixon in a perjury trap.

Remarkably, Nixon was not the only victim of a perjury trap at the Hattiesburg grand jury. Eugene Lewis was asked if he had signed a rescission letter for any land contracts for Petit Bois Island. When the question was asked, the prosecutor had in his possession a copy of such a letter signed by Lewis. When Lewis said he could not recall such a letter, the prosecutor made no attempt to refresh his recollection -- he just sprang the trap and indicted Lewis for a perjury the government had created. See p. 17 supra. Both Holmes and Wiley also were indicted on weak charges of perjury before the grand jury, all of which ultimately were dropped.

The prosecutor had set his trap well for Nixon. Nixon had been deceived into believing he should and could testify; the April interview had uncovered a potential perjury count that could be set up in the grand jury as insurance if the substantive investigation came up dry; in the grand jury, Nixon was lulled by lengthy specific questioning on the Fairchild investment, and then was trapped by ambiguous questioning about Holmes which was not followed up.

Perjury traps are wrong, and constitute a violation of due process. The immense powers of the government and the grand jury should not be put in the service of an ambitious prosecutor seeking to trick a witness into a testimonial misstep. Cf. Mathews v. United States, 56 U.S.L.W. 4183 (February 24, 1988) (approving assertion of entrapment defense at same time defendant denies committing any crime.) The Supreme Court has insisted that a prosecutor may not mislead witnesses or suspects. Cox v. Louisiana, 379 U.S. 559, 570-72 (1965); Raley v. Ohio, 360 U.S. 423, 437-39 (1959); Johnson v. United States, 318 U.S. 189, 197-99 (1943). The perjury trap here was nothing more than an elaborate deception to trap a federal judge who had committed no crime. See Kelly v. Gilbert, 437 F.Supp. 201 (D.Mont. 1976) (enjoining state investigation whose only apparent purpose was to set up perjury before the grand jury). This Court cannot avert its eyes from such abuses, but must squarely confront them and vacate Nixon's conviction on this ground.

### E. The Investigation And Prosecution Were Conducted Unfairly And Denied Defendant Due Process Of Law

Several additional features of the investigation and prosecution of Nixon violate ordinary standards of fairness and due process. We highlight these features at this point, and will seek discovery and a full evidentiary hearing to expose them fully. When combined with the government misconduct detailed above, the need to vacate Nixon's conviction is clear.

First, the prosecutors made the identical threat to four separate individuals (Wiley Fairchild, Holmes, Lewis and Stocks): give us incriminating information on Walter Nixon or we will indict you. When none of the four could provide incriminating information on Nixon, they were each indicted on a series of charges largely manufactured in the grand jury by the prosecutors:

Wiley Fairchild -- indicted on one count of perjury before the grand jury (which was dropped by the government) and a gratuity count on which Nixon was acquitted;

Bud Holmes -- indicted on five counts, including four counts of perjury before the grand jury. The prosecutor later conceded that several of those counts were not very strong. Holmes Declaration, ¶ 7. Holmes was allowed to plead guilty to a single charge of contempt of court.

Eugene Lewis -- Indicted for obstruction of justice and one count of perjury before the grand jury; acquitted.

John Stocks -- Indicted on three perjury counts and one count of obstruction of justice; acquitted.

This dismal record of indicting on flimsy charges reflects the single-minded prosecutorial effort to "get" Nixon. Intimidation of witnesses by the prosecution is a valid basis for dismissing charges. See United States v. Smith, 577 F.Supp. 1232 (S.D. Ohio 1983) (dismissing indictment). Indeed, the desire to "get" Nixon so undermined the prosecutors' sense of duty that they ended up in the extraordinary position of securing a federal indictment of Drew Fairchild for the sole purpose of preventing Drew from receiving a heavy state sentence on the same charges. The desire to get Nixon also infected Jarvis, the anonymous tipster who later clandestinely tape-recorded conversations at FBI request. Jarvis wrote a letter in May 1985 to an FBI agent that included this chilling passage (Def. Ex. 15) (emphasis in original): "four down (Wiley, Drew, Royals and Holmes). I'm eager to go after the big prize." Jarvis testified that indicting Nixon was "the big prize." Tr. 424-25.

Second, the prosecutors poisoned the grand jury by allowing witnesses to tell the grand jury unsubstantiated and false rumors about supposed misconduct by Nixon. An extreme example of this practice was when Wiley Fairchild was allowed to tell the grand jurors that Judge Nixon had been bribed to give Billy Shows a light sentence when Nixon had not even handled the Shows case, as the prosecutors then knew. See United States v. Hogan, 712 F.2d 757 (2d Cir. 1983) (dismissing indictment based on presentation of false testimony and statements to grand jury); United States v. Lawson, 502 F.Supp. 158 (D. Md. 1980) (same).

Third, there is a basis for the inference that the investigation of Nixon was prompted at least in part by the government's loss in the Petit Bois Island case. The inference is based upon the sequence of events in that case, the Tallahassee grand jury and Skip Jarvis' anonymous telephone call to the FBI, see pp. 8-9, supra. The inference builds with additional information -- which we believe can be produced at a hearing -- that Jarvis is originally from Florida and reportedly had served previously as a confidential informant for the FBI in Florida. Should this inference be borne out, the Nixon investigation would turn out to be no more than a vindictive effort to punish a federal judge for ruling against the government (or, more mundanely, as bureaucratic cover for bungling the Petit Bois Island case). Such an improper motivation for investigation would warrant vacating the convictions. See United States v. Meyer, 810 F.2d 1242 (D.C. Cir. 1987) (dismissing charges for prosecutorial vindictiveness);[7] United States v. McDonald, 553 F.Supp. 1003 (S.D. Tex. 1983) (same); United States v. Lippi, 435 F.Supp. 808 (D.N.J. 1977) (same); see also Lenske v. United states, 383 F.2d 20, 27-30 (9th Cir. 1967) (opinion of Madden, J.).

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[7] This opinion was vacated by the court for rehearing en banc and then was reinstated by the Court en banc in an unreported order dated July 31, 1987.

We recognize that federal judges rule against the government every day without facing criminal investigation by the disappointed litigant. That such a course of events is highly infrequent -- and totally contrary to the principles of the judicial system -- does not make it impossible. In this case, the inference of such grossly improper motivation has sufficient foundation that it must be explored at an evidentiary hearing.

In defending himself, Nixon has never sought refuge in arguments based on the constitutional separation of powers that, although soundly reasoned, would give federal judges greater protection from criminal prosecution than that enjoyed by other citizens. Compare United States v. Claiborne, 727 F.2d 842 (9th Cir.), cert. denied, 469 U.S. 829 (1984) (arguing that federal judge cannot be indicted); United States v. Claiborne, 790 F.2d 1355 (9th Cir. 1986) (arguing that federal judge cannot be incarcerated). By the same token, however, federal judges cannot be accorded less protection than other citizens and cannot be made targets of opportunity for ambitious prosecutors. Indeed, constitutional concerns for the independence of the federal judiciary requires that judges not become prosecutorial targets of opportunity.

The story of the Hattiesburg grand jury is a story of prosecutorial overreaching, persistent abuse of individual rights, and questionable prosecutorial motives. The federal courts have recognized their responsibility to protect individuals against such abuses by state prosecutors, Rowe v.

*Griffin*, 676 F.2d 524 (11th Cir. 1982); *Shaw v. Garrison*, 467 F.2d 113 (5th Cir.), *cert. denied*, 409 U.S. 1024 (1972); *Duncan v. Perez*, 445 F.2d 557 (5th Cir.), *cert. denied*, 404 U.S. 940 (1981), or by federal prosecutors and investigators, *United States v. Dahlstrum*, 493 F.Supp. 966 (C.D. Cal. 1980), *appeal dismissed*, 655 F.2d 971 (9th Cir. 1981), *cert. denied*, 455 U.S. 928 (1982); *United States v. Omni International Corp.*, 634 F.Supp. 1414 (D.Md. 1986). Because this pattern of events combined to deny Nixon due process of law, his convictions should be vacated.

## CONCLUSION

For all of the foregoing reasons, defendant Nixon requests that he be permitted to conduct discovery as allowed under the § 2255 rules, that an evidentiary hearing on the issues raised above be convened at the earliest possible time, and that his convictions and sentence be vacated.

Respectfully submitted,

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TO: The Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee

RE: Procedures For Consideration Of House Resolution 407 Calling for Impeachment of Judge Walter L. Nixon, Jr.

DATE: April 14, 1988

This Memorandum will address several of the threshold issues which the Subcommittee must consider in connection with Resolution No. 407, calling for the impeachment of Judge Walter L. Nixon, Jr. Our discussion will focus on five major points:

1) Congress must undertake a full and independent review of the evidence concerning Judge Nixon, and may not rely upon the fact of his conviction as a basis for impeachment;

2) In view of the substantial grounds urged for vacating Judge Nixon's conviction in his pending motion under 28 U.S.C. § 2255, Congress should stay its action until the courts can consider whether Judge Nixon was convicted unconstitutionally;

3) The House of Representatives should affirmatively investigate the evidence of government misconduct in this case, since those allegations go directly to whether Judge Nixon committed a crime or not;

4) The key constitutional phrase "high crimes and misdemeanors" has a narrow meaning, and Congress should respect its limited scope.

5) A number of basic factual issues must be addressed to determine whether Judge Nixon has committed "high crimes and misdemeanors"?

We also invite the Subcommittee to inquire widely about Judge Nixon's twenty years on the federal bench. His performance as a judge has been distinguished by fairness and intelligence, as has been recognized by both political parties. Appointed by President Johnson in 1968, Judge Nixon was offered promotion to the Fifth Circuit Court of Appeals by the Reagan Administration in 1982. Such a lengthy career devoted to public service entitles Judge Nixon to the careful consideration of Congress on Resolution 407.

1. Congress Must Undertake A Full And Independent Review of the Evidence Concerning Judge Nixon, And May Not Rely Upon The Fact Of His Conviction As A Basis For Impeachment

The Constitution plainly contemplates that the impeachment process is entirely separate from judicial proceedings. Article I, Section 2 states that the House "shall have the sole Power of Impeachment," while Article I, section 3 provides that "The Senate shall have the sole Power to try all Impeachments." Just as a court may not resolve a case by simply adopting the views of another branch of government, Congress must exercise its impeachment power as an independent and coordinate branch of government. Congress may not impeach solely on the basis of criminal convictions, nor may it simply adopt certain factual or legal conclusions from judicial proceedings.

In Federalist No. 65, Alexander Hamilton lucidly explained why the Framers chose to make the impeachment process entirely separate from the judiciary. He noted that impeachments "will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused," so the Framers created exacting procedural protections. In particular, Hamilton added, the Supreme Court could not properly preside over an impeachment when the same charges of misconduct ultimately might come before that Court in its judicial capacity. Such a dual function, Hamilton wrote, would unfairly prejudice the rights of the accused. (Emphasis supplied.)

> Would it be proper that the persons [the Supreme Court Justices] who had disposed of his [the accused's] fame, and his most valuable rights as a citizen, in one trial, should, in another trial, for the same offense, be also the disposers of his life and his fortune? Would there not be the greatest reason to apprehend that error, in the first sentence, would be the parent of error in the second sentence? That the strong bias of one decision would be apt to overrule the influence of any new lights which might be brought to vary the complexion of another decision? Those who know anything of human nature will not hesitate to answer these questions in the affirmative; and will be at no loss to perceive that by making the same persons judges in both cases, those who might happen to be the objects of prosecution would, in a great measure, be deprived of the double security intended them by a double trial.

Strikingly, Hamilton's views still prevailed when the Senate two years ago refused to convict Judge Harry Claiborne on the Third Impeachment Article against him, which would have removed him from office on the sole ground that he had been convicted of a crime by the courts. Several senators from both political parties explained that they were unwilling to abdicate the impeachment power to the courts.

Sen. McConnell said that impeachment of Judge Claiborne on Article Three "would connote an improper reliance by the Senate on the judicial system when it determines impeachable offenses. The Constitution grants the Senate the sole power to try impeachment cases." 132 Cong. Rec. S16241 (Oct. 14, 1986). Sen. Robert Byrd stated that he did not vote in favor of that impeachment article because "I did not want the support of that article to be misinterpreted as meaning that the Senate has no role to play when a person has been convicted previously by our judicial branch of Government." Id. at S15871 (Oct. 10, 1986).

In remarks during a closed session that later were printed, Sen. Matsunaga argued that Impeachment Article Three "violates our basic tenet, our basic concept of three separate and independent branches of Government," id. at S15874, while Sen. Hatch insisted that "The separation of criminal and impeachment proceedings, in my mind, precludes this body from merely deferring to the existence of a criminal conviction. We have the duty to reach our own independent conclusion about the facts which gave rise to these charges." Id. at S15763 (Oct. 9, 1986). See id. at S15767 (Sen. Specter) ("the Senate has a duty to make an independent determination of the underlying facts" and "should not merely accept the judgment of the U.S. district court in which Judge Claiborne was tried and convicted").

Accordingly, there can be no procedural shortcuts in the impeachment of a federal judge. Congress may not use a criminal conviction as a substitute for the careful inquiry into the case that is required by the Constitution. This Subcommittee plays a critical role in initiating the impeachment deliberations. As Sen. Evans stated during the Claiborne debate, "The trial of an impeachment is no place for shortcuts or haste. Justice may be elusive, but that is no excuse for a half-hearted try to find it." 132 Cong. Rec. S16822 (Oct. 16, 1986).

2) The Most Prudent And Fair Course Is For Congress To Stay Impeachment Until Resolution Of Judge Nixon's Motion To Vacate The Convictions

The sole ground for Judge Nixon's impeachment is that he has been convicted by a court. In referring Judge Nixon to the Judicial Conference of the United States concerning possible impeachment, the Fifth Circuit Judicial Council "premised its certification . . . entirely upon the judgment of conviction" of Judge Nixon. (Letter of February 26, 1988 from Acting Chief Judge of the Fifth Circuit, to Judicial Conference of the United States.) In its Certificate dated March 15, 1988, the Judicial Conference referred Judge Nixon's case to the House of Representatives based "entirely upon a judgment of conviction in a criminal case."

But that conviction is now subject to direct and serious challenge in the post-conviction motion filed in the U.S. District Court for the Southern District of Mississippi. In that motion and the supporting materials, which previously have been provided to the members of the Subcommittee, Judge Nixon seeks to have the conviction vacated because:

a) The government violated its obligation to disclose material inducements offered to win the cooperation of one of the two key witnesses at trial;

b) The government sponsored materially false and misleading testimony by two witnesses;

c) The government improperly targeted Judge Nixon for investigation and indictment and then, when it was unable to prove any substantive wrongdoing, sought to convict him of false testimony before the grand jury -- offenses (if offenses they were) that were created entirely by the government through its improper investigation.

Although Congress has an obligation to conduct its own independent review of any impeachment, it would be premature for Congress to do so in Judge Nixon's case until the courts can rule on the pending motion under § 2255.

First, we have presented evidence in the § 2255 proceeding that seriously undermines the credibility of a key witness -- and of the prosecution itself -- in a perjury case. That evidence goes to the heart of the conviction and raises serious questions about the validity of that conviction. As Judge Charles Wiggins testified during the Claiborne impeachment hearing, a collateral attack that is not directed at the "integrity of the fact-finding process" is "utterly irrelevant" to an impeachment inquiry. But a challenge like Judge Nixon's, which squarely challenges the integrity of the fact-finding process, is "quite relevant" to a possible impeachment. Hearing On Conduct of Harry E. Claiborne, U.S. District Judge, District of Nevada, before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Judiciary Comm., 99th Cong., 2d Sess. 42 (Judge C. Wiggins).

Second, the Judicial Conference referred Judge Nixon to the House of Representatives solely based on the judgment of conviction. Unlike other cases -- such as that of Judge Hastings, for example -- there has been no suggestion of any impeachable conduct other than the conviction. Consequently, Congress would be prudent to stay its hand while that conviction is subjected to a substantial court challenge.

Both fairness and due concern for the prudent exercise of the impeachment power support awaiting the decision on the § 2255 motion. We do not contend that Congress should await the resolution of post-conviction proceedings in every situation, but the facts of this case strongly commend that course. We have ben advised that a judge was specially designated this week to hear Judge Nixon's case, and we are hopeful that there will be a prompt hearing and ruling on the § 2255 motion. [1]

## 3. The House Should Investigate The Government's Actions In This Case

Traditionally, committees of the House of Commons conducted affirmative investigations prior to making a recommendation on impeachment. As Jefferson observed in his Manual of Parliamentary Practice and Rules of the House of Representatives, those committee inquiries were sometimes "ex parte" but "in the later practice the sentiment of committees has been in favor of permitting the accused to explain, present witnesses, cross-examine, and be represented by counsel." See House Judiciary Committee, 93d Cong., 1st Sess., Impeachment, Selected Materials, 22 (Comm. Print 1973) (citations omitted) [Volume hereinafter cited as "Impeachment Materials"]. Jefferson's observation was reinforced in a 1975 article on impeachment (Williams, "The Historical and Constitutional Basis for the Senate's Power to Use Masters or Committees to Receive Evidence In Impeachment Trials," 50 N.Y.U. L. Rev. 512, 526-27 (1975) (footnotes omitted)):

> The committees [of the House of Commons] which investigated and formulated the charges were

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1/ We note that even if Judge Nixon's § 2255 motion were to fail, Congress still would have to undertake a full and independent review of the case. A motion to vacate a conviction under § 2255 is limited to constitutional grounds and thus does not involve a full adjudication of the charges against Judge Nixon.

> usually granted broad investigatory powers to send for persons, papers and records. Although it may not have been deemed essential for such committees actually to examine witnesses in person, there must have been a very strong presumption that thoroughness would so require, for committees were generally expected to consider both the initial charges and subsequent articles and to 'report what matter is therein contained, and can be proved, that is fit for an Impeachment.'

The House of Representatives has followed this precedent on a number of occasions. In 1827, a special House Committee reported on an investigation into possible impeachment of then-Vice President John C. Calhoun concerning actions taken while he was Secretary of War, see Impeachment Materials, supra, at 371-600, and a similar procedure was used to investigate charges against Vice President Schuyler Colfax in 1873 concerning the Credit Mobilier affair. H. Rep. No. 81, 42d Cong., 3d Sess. (1873). And, of course, the House conducted an extensive inquiry into allegations against President Richard Nixon in 1974.

This case presents serious questions concerning prosecutorial abuse and overreaching which this Subcommittee has an obligation to investigate. Judge Nixon -- like Judge Claiborne before him -- was targeted for investigation and prosecution by the Public Integrity Section of the Department of Justice. Although each case involved its own particular facts, there is a common thread of government overreaching which demands congressional attention.

In the Claiborne debate, Sen. Levin said that the "evidence clearly suggests that the Government engaged in a pattern of selective prosecution, prosecutorial overreaching, and perhaps intimidation of witnesses and other improprieties." 132 Cong. Rec. S16824 (Oct. 16, 1986). Sen. McConnell also was "disturbed by the allegations of prosecutorial targeting" and "the possible over-zealousness on the part of Justice Department, strike force, and IRS agents." Id. at S16241 (Oct. 14, 1986). Sen. Bingaman spoke of "serious" allegations by Judge Claiborne of "misconduct and abusive targeting by Federal prosecutors." He added, "it is clear from the debate which has taken place here in the Senate that many members are concerned about not only the evidence of overreaching by the Government in this case but other instances of similar overreaching." Id. at S15763 (Oct. 9, 1988) (emphasis added).

Against this background, it is well to remember the cautionary words on prosecutorial abuse written by Judge Laurence Silberman in In re: Sealed Case, No. 87-5261 (D.C. Cir., January 22, 1988), cert. granted sub nom. Morrison v. Olson, No. 87-1279, in striking down the independent counsel statute. Simply by substituting the phrase "Public Integrity Section" for the term "independent counsel" in the following passage, Judge

Silberman's message takes on special force here (slip op., pp. 70-71) (footnotes omitted):

> A person occupying this statutory office [the Public Integrity Section] has, it seems to us, unique incentives to seek an indictment. Our concern is based on the self-evident proposition that the whole raison d'etre of the [Public Integrity Section] is not to administer the criminal law across a wide population, but rather to focus on one individual or group of individuals targeted at the inception of the office. In effect, an entire self-sufficient government agency is created from scratch to investigate and perhaps prosecute a single individual. The need to justify even the expense of an office dedicated solely to one goal must generate a reluctance to decide against indictment or to conclude the investigation absent near certainty that no indictment is possible or that no further leads remain. And inevitably, the success of the office itself, in the public's eyes, at least, must turn to some extent upon whether indictment and conviction are obtained. The [Public integrity Section] is thus 'subject to formidable public -- and perhaps self-imposed -- pressure to indict in the one case he was appointed to pursue.'

There is disturbing evidence of both improper prosecutorial motivation and prosecutorial overreaching in the Nixon case. This evidence includes the following:

a) Judge Nixon's submission in the § 2255 proceeding describes evidence that Judge Nixon was targeted after he ruled against the federal government in a controversial land condemnation case concerning

Petit Bois Island in the Gulf of Mexico. Since we submitted those materials, we have discovered further support for this conclusion in the attached affidavit signed in September 1983 by R. David Sanders of Jackson, Mississippi, the original owner of the Petit Bois Island property. Mr. Sanders describes an interview by an FBI agent on July 20, 1983, during which the agent asked whether the case had been engineered to appear before Judge Nixon, whether Judge Nixon had conducted the trial fairly and grasped the issues presented, and whether Judge Nixon had any interest in the property on Petit Bois Island. As Sanders recounts, "I was frankly astounded by the suggestion" of the agent's questions.

The true significance of the Sanders interview, however, is the date when it occurred -- July 1983. At Judge Nixon's trial, the jury was told that Judge Nixon was investigated because a Mississippian named Skip Jarvis awoke one morning in November, 1983 and decided to tell the FBI about a supposedly corrupt arrangement involving Judge Nixon that Jarvis had known about for the previous thirty-three months. Based upon the Sanders Affidavit, that version appears to have been false. Indeed, it increasingly appears that the judge actually was targeted for investigation based on his Petit Bois Island ruling.

This is a very distributing possibility. The government, alone among litigants, holds the power to bring criminal charges against those adversaries and judges who displease it. Following the Petit Bois Island case, both the litigants and the judge were investigated and indicted by the federal government. The litigants -- John Stocks and Eugene Lewis -- were acquitted, while Judge Nixon was convicted only on two perjury charges that were, in effect, created by the decision to initiate an investigation. If our judiciary is to remain independent, the price of ruling against the government cannot be surviving a vindictive criminal investigation.

b) The prosecutors oppressed and dominated one of the two key trial witnesses, 71-year-old businessman Wiley Fairchild. These actions, which improperly were not disclosed to Judge Nixon's counsel before trial, included (i) an unwritten conditional promise to drop charges against Fairchild; (ii) an undisclosed promise to help Fairchild's son in connection with his arrest on drug charges; (iii) dictating Fairchild's statement at his sentencing; (iv) using Fairchild's personal assistant to help pick the jury for Judge Nixon's trial; (v) working with that personal assistant to draft a script for Fairchild's trial testimony and to deliver that script to Fairchild for him to rehearse.

c) The prosecutors used the grand jury as a tool for manufacturing perjury charges which then were used to squeeze three different people -- Wiley Fairchild, Paul "Bud" Holmes, and Eugene Lewis -- for incriminating testimony against Judge Nixon. Those perjury charges ultimately were dropped against Holmes and Fairchild, while Lewis was acquitted by a jury.

d) At trial, the prosecutors affirmatively misled the jury by eliciting incomplete and misleading testimony about the government's promises to, and relationship with, key witnesses.

e) In order to make good on one of their undisclosed promises to Wiley Fairchild, the federal prosecutors indicted his son on drug-smuggling charges to protect the son from a threatened five-year prison term in state court. Instead, due solely to the intervention of the federal prosecutors, Fairchild's son received only a six-month federal sentence for his role in a marijuana smuggling operation.

Congress should not reward these prosecutorial abuses. More important, Congress should not further punish the victims of those abuses, including Judge Nixon. This Subcommittee has a duty to investigate fully the initiation and conduct of the government investigation in this matter.

### 4. Under The Constitution, "High Crimes And Misdemeanors" Has A Narrow Meaning

Under the Constitution, Congress does not have unlimited discretion to impeach any civil officer on any grounds. The constitutional text confines impeachment to cases of "treason, bribery, or other high crimes and misdemeanors." Because the first two categories of crimes are not present here, the meaning of "high crimes and misdemeanors" is critical for deciding on Resolution 407.

According to Hamilton, impeachment applies to "those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself." The Federalist, No. 65. Again, Hamilton's words were echoed during the Claiborne debate when Sen. Evans observed that impeachment under English common law was confined to misconduct in office such as "misapplication of funds, abuse of official power, neglect of duty, encroachment on or contempt of legislative prerogatives, and corruption." 132 Cong. Rec. S16821 (Oct. 16, 1986).

The limited scope of the Impeachment Clause is established by two central events during the Constitutional Convention. On August 27, 1787, Mr. Dickinson presented a motion to allow removal of federal judges "on the application [by] the Senate and House of Representatives." 2 M. Farrand, Records of the Federal Convention 428 (1911). As Roger Sherman of Connecticut then pointed out, a similar provision allowed removal of English judges by "address" of the Houses of Parliament, id., and several state constitutions then contained similar provisions for removal of judges. See Ziskind, Judicial Tenure in the American Constitution: English and American Precedents, 1969 Supreme Court Review 135. But Gouvernor Morris of New York objected that it "was fundamentally wrong to subject Judges to so arbitrary an authority," while James Wilson complained that

"Judges would be in a bad situation if made to depend on every gust of faction which might prevail in the two branches of our Govt." 2 M. Farrand, supra, at 429. Randolph of Virginia also "opposed the motion as weakening too much the independence of the Judges." Id. at 428-29. Ultimately, Dickinson's motion commanded the support of only one state delegation, while seven states voted against it.

Two weeks later, George Mason of Virginia proposed to amend the Impeachment Clause to allow removal for "maladministration." Id. at 550. But Madison immediately protested: "So vague a term will be equivalent to tenure during pleasure of the Senate." Mason withdrew his motion and substituted the term "other high crimes & misdemeanors."

From these two episodes, it is clear that the Framers did not view the Impeachment Clause as creating an unbridled power to remove judges for any reason that might occur. Dickinson's proposal to permit removal through application was rejected as conferring too broad a power on Congress, while "maladministration" also was considered too broad a term for defining impeachable offenses.

Moreover, the limited meaning of "high crimes and misdemeanors" was illustrated when the Convention deleted that phrase in the extradition clause of one draft of the Constitution. The phrase was replaced by "other crime," in

Madison's words, "in order to comprehend all proper cases: it being doubtful whether 'high misdemeanor' had not a technical meaning too limited." Id. at 443. Indeed, just as Hamilton wrote in the Federalist, "high crimes and misdemeanors" was considered by Blackstone in 1757 to describe only a "political crime" or some action concerning improper administration of public office. See R. Berger, Impeachment, 61-62 (1973); id. at 86-93 (terms had a "limited" and "technical" meaning); Williams, supra, at 536 (the Framers "had a narrower view of impeachable offenses than their English forebears") (footnote omitted).

It is difficult to define "high crimes and misdemeanors" with precision. Nevertheless, it is essential for Congress to appreciate the constitutional limitations that the term places on the congressional impeachment power. These limits may be illustrated by the statement of Sen. Elihu Root in voting on the impeachment of Judge Robert W. Archbald in 1913. Sen. Root, joined by Sen. Henry Cabot Lodge, explained that he was voting in favor of six impeachment articles concerning Archbald's efforts to gain favors from railroad companies that appeared before his court, but "I have voted 'not guilty' upon the other articles, because while most of them involve improper conduct, I do not consider that the acts proved are high crimes and misdemeanors . . ." 49 Cong. Rec. 1448 (1913).

5. Judge Nixon's Conviction Provides No Basis For Impeachment

Although it may be premature to address this Subcommittee fully on the substance of the charges against Judge Nixon, it is critical to focus on the precise nature of the charges against him and the proper definition of "high crimes and misdemeanors."

First, there has been no suggestion of impropriety in Judge Nixon's discharge of his official duties as a United States District Judge. Official misconduct, as noted above, is the original and most accurate focus of the phrase "high crimes and misdemeanors" in the Impeachment Clause.

Second, Judge Nixon's perjury convictions are based upon statements that were literally true under one understanding of the prosecutors' ambiguous questioning; in five federal circuits covering 26 states such testimony cannot, as a matter of law, serve as the basis for a perjury conviction. If Judge Nixon happened to reside in one of those 26 states, he could not have been convicted. Surely such a debatable offense does not constitute a high crime or high misdemeanor under the Constitution.

Third, there is no evidence of any illegal profit or benefit to Judge Nixon, nor that the supposedly false testimony was offered to conceal illegal activity. Again, the offenses charged simply do not resemble "high crimes and misdemeanors."

## CONCLUSION

As we wrote to Chairman Edwards in our letter dated March 25, 1988, we are eager to meet with the Subcommittee members to respond to all questions and concerns about Resolution 407. We appreciate that conducting an impeachment is both a solemn responsibility and a daunting constitutional challenge. We also recognize that a convicted federal judge does not command the immediate sympathy of the members of Congress who must review the proposed impeachment. We seek only a fair opportunity to prove that there is much, much less to Judge Nixon's conviction than appears at first glance. Indeed, Judge Nixon is far more a victim of skewed prosecutorial policies than a proper candidate for impeachment.

Respectfully submitted,

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## AFFIDAVIT

STATE OF MISSISSIPPI

COUNTY OF HINDS

I, R. DAVID SANDERS, being first duly sworn, depose and say that:

On or about July 20, 1983, I was interviewed by Special Agent Cletus Blake, of the Jackson office of the Federal Bureau of Investigation. This interview was requested by Mr. Blake and was conducted at the Jackson offices of the Federal Bureau of Investigation. Mr. Blake had advised me in advance that the subject of the interview was to be the sale of property on Petit Bois Island to John Stocks. I participated in this interview without counsel.

In response to my questions, Mr. Blake stated that he was making no record of the interview other than his written notes. He also assured me that the investigation of which this interview was a part did not at that time, and would not in the future, focus on me as a subject.

Mr. Blake questioned me about the entire history of the Sanders family's ownership of the property on Petit Bois Island, including when and how it was acquired, the negotiations we had with the National Park Service and the negotiations and transaction with Mr. Stocks. In the course of the interview, I asked Mr. Blake what it was about the transaction with Mr. Stocks that had drawn the interest of the FBI. He replied that the sale to Stocks for $1,792,500.00 on December 31, 1979, and the Court's determination that, some five months later, the property was worth $6,120,000.00, suggested the possibility that some fraud may have been practiced. Mr. Blake asked about my acquaintance with and knowledge of several persons, including John Stocks, Gene Lewis, Harold Lewis, and a Mr. Thompson, and another man whose name I cannot recall. He stated that these were the persons on whom the investigation was focused. He further stated that the request that he interview me had come from the Jacksonville, Florida, office of the United States Attorney.

Mr. Blake inquired extensively into the details of the contract between the Petit Bois, Inc. stockholders and Mr. Stocks. I pointed out to him several times that all of this information could be found in the record of the trial. He wanted me to recount these details for him, nevertheless. I explained the

terms of the contract for sale of Petit Bois, Inc. stock, the note and deed of trust, the provision for release of lots as they were sold, the down payments, assignments of notes, the escrow mechanism, etc. Mr. Blake asked about the appraisers used by defendants in the trial and seemed particularly interested in Louis Clark's role. He wanted to know how we had arrived at the value we placed on the property for sale to Mr. Stocks. I explained how we came to have our own appraisal made by Robert Viele, and how the sale price was negotiated.

Mr. Blake asked me how Judge Nixon came to hear this case. I replied that I assumed he was assigned the case in the normal course of things. Mr. Blake asked if we had had discussions about which judge might be "best" to hear the case, and whether there had been some thought that Judge Nixon would be more favorable to our position. He seemed to think that this case normally would have been heard by a Magistrate because it was a civil case. At this point, I asked Mr. Blake if he was a lawyer. He replied that he was a CPA, but not a lawyer. I told him thatI had had virtually nothing to do with the preparation for the trial inasmuch as I did not own the property when it was condemned, and suggested that the attorneys of record could give him more information along these lines. He asked who these attorneys were, and I gave him all the names. He asked me what I thought of Judge Nixon's conduct of the trial and grasp of the issues. I found this line of questioning somewhat bizarre and disturbing in its implications and told him so. Mr. Blake asked me if, to my knowledge, Judge Nixon had any interest in the property on Petit Bois Island or the property on Deer Island. I think he also inquired about any possible interest Judge Nixon might have in St. George Island. I told him I had no such knowledge and that I was frankly astounded by the suggestion.

Mr. Blake then inquired generally about the Deer Island transaction and about my other business interests, which I briefly described for him. This interview lasted about two hours. The tone of the interview was friendly and courteous, and Mr. Blake was not at all aggressive toward me in his questions.

This affiant is a resident of Hinds Couny, Mississippi.

R. David Sanders
R. David Sanders

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid on this the 12th day of September, 1983.

Notary Public

My Commission Expires: [illegible]

EXHIBIT N - 42

ONE HUNDREDTH CONGRESS

PETER W. RODINO, JR., NEW JERSEY, CHAIRMAN

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WILLIAM E. DANNEMEYER, CALIFORNIA
PATRICK L. SWINDALL, GEORGIA
HOWARD COBLE, NORTH CAROLINA
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May 24, 1988

David Overlock Stewart, Esq.
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Suite 500
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Dear Mr. Stewart:

This is to advise you that the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary has scheduled hearings on H. Res. 407, impeaching Judge Walter L. Nixon, Jr., to begin on Thursday, June 9, 1988 at 2:00 p.m., in Room 2226 of the Rayburn House Office Building. A formal letter of invitation from Chairman Rodino to Judge Nixon will be forthcoming.

Should you wish to present any testimony or other evidence on Judge Nixon's behalf, you should provide the Subcommittee with a list of any witnesses you wish the Subcommittee to hear, a precise summary of any anticipated testimony and copies of any documents you intend to offer at the hearing, no later than June 2, 1988. This proffer will then be evaluated by the Subcommittee to determine whether it will admit the materials or wishes to hear from the witnesses referred to in the proffer.

Very truly yours,

Alan I. Baron

Alan I. Baron
Special Counsel

AIB:cjl

# EXHIBIT N - 43

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JAY L. ALEXANDER
STEVAN E. BUNNELL
DAVID I. GELFAND

COURTNEY A. EVANS
*WILLIAM W. GREENHALGH
OF COUNSEL

*NOT ADMITTED IN D.C.

May 27, 1988

BY HAND

Alan I. Baron
Special Counsel to Commission
on Judiciary
2137 Rayburn Office Building
Washington, D.C. 20515-2403

Dear Mr. Baron:

I write to raise several procedural and substantive concerns with respect to the notice I received from you yesterday that a hearing on the impeachment of Judge Walter L. Nixon, Jr. has been scheduled for June 9 -- only two weeks after I received your notice -- before the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee. By separate cover, I am submitting a request that the hearing date be put back by two weeks to allow Judge Nixon adequate time to prepare for the hearing. This letter will address more substantive matters. More particularly, based upon your letter and our telephone conversation yesterday, I am very troubled by the apparent lack of investigation by the Subcommittee into Judge Nixon's case, and by the absence of regular procedures for this hearing.

1. Background -- At the outset, I would like to review the brief history of this matter before Congress. By letter dated March 18, 1988, Chairman Rodino notified Judge Nixon that House Resolution 407 proposing Judge Nixon's impeachment had been referred to Rep. Edwards' subcommittee. On March 25, 1988, I wrote to Chairman Edwards to explain Judge Nixon's intention to resist impeachment and to request an opportunity to meet and discuss procedures to be followed in considering Resolution 407. On April 11, 1988, Rep. Edwards replied by letter stating that "you will be afforded the opportunity to present Judge Nixon's case to Congress in a full and fair manner," and suggesting that you and I meet "to discuss the procedures we plan to follow."

When you and I met for the first time on April 14, you stated that you had not had an opportunity to review the trial record in Judge Nixon's case, and that additional staff would be hired to handle Judge Nixon's case but that such staff had not yet arrived. You also stated that the Subcommittee had not decided on any procedures for the hearing on House Resolution 407. At that meeting, I also provided you with a memorandum addressing several legal and factual points relevant to the impeachment process. Among the points I attempted to make in that memorandum and our meeting are:

-- That Congress must undertake a full and independent review of Judge Nixon's case;

-- That Congress should consider thoroughly the substantial grounds asserted for vacating judge Nixon's conviction in the pending motion under 28 U.S.C. § 2255, and, indeed, that Congress should stay action pending the outcome of that proceeding;

-- That, at the very least, Congress must investigate the significant evidence of government misconduct in Judge Nixon's case, which allegations go directly to whether Judge Nixon committed a crime;

-- That Judge Nixon's actions could not constitute impeachable offenses.

I did not hear from the Subcommittee further until yesterday.

2. The Lack Of Investigation By The Subcommittee -- Based on your letter of May 25 and during our telephone conversation, we are concerned that the House may be reviewing Judge Nixon's case in only a very summary fashion that would not be consistent with the grave factual, legal and constitutional issues presented in this case. Several developments contribute to our concern.

First, you have stated that the only witness you currently expect to call in support of the impeachment resolution is the former prosecutor in the case, Reid Weingarten. This is a highly doubtful course, and demonstrates an odd notion of how to present a fair and complete view of the facts in this case.

Mr. Weingarten devoted two years of his life to securing Judge Nixon's conviction, striking at least three separate and dubious plea bargains designed for the sole purpose of somehow generating evidence against Judge Nixon. In our pending post-conviction petition, we have raised serious questions about Mr. Weingarten's conduct of the investigation and prosecution, and those factual allegations have in large part been confirmed by Mr. Weingarten's own responsive affidavit submitted with the government's Answer to our post-conviction Petition. 1/

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1/ Due to a confusing Order entered in the case, I believe the Government's Answer may have been sealed. We have moved to have (Cont'd)

Our concern here is not that Mr. Weingarten is a witness before the Subcommittee. Indeed, we think that the Subcommittee should inquire very carefully into his conduct during the investigation and prosecution. Our concern is that Mr. Weingarten is to be the only witness, which suggests that the Subcommittee intends to rely on him for its version of the underlying facts of the case -- as to which he has no firsthand knowledge. In these circumstances, Mr. Weingarten is a very unlikely individual to be the sole source of the House's live testimony on Judge Nixon's supposed offenses?

I emphasize our dismay over the this method of proceeding for a single central reason -- this impeachment inquiry is the first occasion since Judge Nixon's trial at which we are free to argue the plain fact that Judge Nixon has committed no crime under federal law nor any "high crimes and misdemeanors" under the Constitution. As you know, on appeal and even in the post-conviction proceeding, we have not been able to argue Judge Nixon's innocence. And the trial itself was deeply flawed by the prosecution's conduct and by the confusion engendered by the plainly meritless allegation that Judge Nixon

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that Answer unsealed, and will provide those materials to the Subcommittee when such an Order is entered. For the convenience of the Subcommittee, however, I enclose our Reply, which has not been sealed.

had received an illegal gratuity (a charge on which he was acquitted). We welcome the opportunity for someone finally to look carefully at the evidence concerning Judge Nixon's supposed perjury and to recognize the complete failure of proof. But if the Subcommittee proposes to rely solely upon the testimony of Judge Nixon's prosecutor, we must be very concerned whether there will be a full and fair inquiry. We surely are disappointed and surprised that the Subcommittee evidently has undertaken no examination or consideration of Judge Nixon's distinguished career of professional achievement and community involvement.

Your expressed intention to rely solely upon Mr. Weingarten's testimony, combined with the extremely brief period between initiation of your inquiry and the scheduled hearing date, also suggest that the House has not discharged its constitutional obligation to investigate fully the facts and law relevant to this case. We have urged the House to investigate the apparently improper motivations behind the investigation of Judge Nixon as well as the abuses that occurred during the investigation. Without taking those investigative steps, the House cannot evaluate the evidence of vindictive prosecution here.

3. The House Should Await The § 2255 Proceeding -- If the House will not undertake a full investigation, we would urge

it at least to grant Judge Nixon the opportunity to complete the § 2255 proceeding at the trial level before rushing to judgment. Since Chief Judge Nangle took over that case several weeks ago, he has shown a disposition to move it along promptly, and has indicated an intention to hold the evidentiary hearing this summer. There seems little reason for Congress to move forward without conducting any material inquiry into the prosecutorial misconduct allegations when the courts will be conducting a full inquiry into that issue at virtually the same time. A far more prudent course -- and one that would be considerably more fair both to Judge Nixon and to the Members of Congress who must vote on House Resolution 407 -- would involve waiting the 60 days or so that may elapse until the post-conviction petition may be heard.

4. The Subcommittee Must Extend Due Process To Judge Nixon -- Finally, I must address the apparent lack of fair procedures available for the scheduled hearing. The most glaring unfairness of the current procedure is that we have no formal notice as to what Judge Nixon's supposed "high crimes and misdemeanors" are. In our telephone conversation, I believe you confirmed that your intended presentation will be confined to matters relating to the Fairchild investment and Judge Nixon's grand jury testimony. But our informal exchange over the

telephone during a lunch break in Judge Hastings' hearing is hardly an adequate procedure for giving notice of the basis for the impeachment of a federal judge. Simple fairness requires full and formal notice of the anticipated bases of any impeachment action, and that such notice be provided in ample time for Judge Nixon to prepare to meet all allegations. I must urge in the strongest possible terms that we be provided with such notice in a timely fashion.

Second, I must address the procedures concerning witnesses. In your letter you have stated that Judge Nixon must by June 2 list any witnesses he might call at the hearing and make a proffer as to their likely testimony. Although we have not yet determined our intentions concerning possible witnesses at such a hearing, we must object to that procedure. Surely the record materials that have been submitted to the Subcommittee, including the trial transcript, appeal papers, and post-conviction papers, provide a full picture concerning potential witnesses and there is no reason to require such proffers, particularly when there is no indication that you intend to provide a written proffer to Judge Nixon concerning the anticipated testimony of your witness or witnesses. Similarly, you make no reference to compulsory process to compel the attendance of witnesses, and you have told me that there are no procedures for the hearing other than those described in your letter to me. Without compulsory process, the opportunity to call witnesses becomes hollow indeed.

I am also very troubled by the Subcommittee's silence as to our right to question your witnesses. After twenty years on the federal bench and his resulting detachment from political life, Judge Nixon can have no realistic expectation that any member of the Subcommittee will act in his interests or as his advocate, and surely Impeachment Counsel will not do so. Consequently, it is imperative to ensure a full presentation of the matter to the Subcommittee that Judge Nixon's representatives advocates have an opportunity to question all witnesses. To deny that right would be to ensure a one-sided and unfair hearing.

Equally, we are entitled to know what documentary evidence you propose to submit to the Subcommittee. Again, you have imposed a one-sided requirement that Judge Nixon provide notice of all documentary evidence by June 2, but you have provided no indication that Judge Nixon will receive any notice concerning the documentary evidence that will be offered against him or that we will have an opportunity to review that evidence prior to the hearing. In particular, if you intend to offer into evidence any of the sealed court materials which you have acquired and which were the subject of previous letter of objection from me, we certainly must be given a timely opportunity to review those materials before the hearing.

The gravity and constitutional significance of an impeachment proceeding should preclude tactics such as trial by "sandbagging." I urge you to impose on yourself the same procedures that you have imposed on Judge Nixon. To do any less would offend basic notions of due process.

I would welcome a prompt response to the matters covered by this letter.

Very truly yours,

David O. Stewart

David Overlock Stewart

DOS/paa

cc: Rep. Don Edwards (By Hand)
Rep. Sensenbrenner
Rep. Kastenmeier
Rep. Conyers
Rep. Schroeder
Rep. Schumer
Rep. DeWine
Rep. Dannemeyer

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA, )
)
v. ) H88-0052(G)
)
WALTER L. NIXON, JR., )
)
Defendant. )

## PETITIONER'S REPLY MEMORANDUM

The government's Response to the Petition to Vacate Convictions in this case establishes four central points:

First, the government evidently hopes in this proceeding to convict Nixon on the gratuity charge on which he has been acquitted -- there is no other explanation for the government's unrelenting emphasis on Nixon's alleged receipt of an illegal gratuity. Indeed, the government in its final crescendo proclaims that Nixon was prosecuted "only because he improperly received gratuities from a wealthy investor." Government Response, p. 48. The jury, however, acquitted Nixon on that charge. The government's extended argument to the contrary is, at best, irrelevant.

Second, and far more important, the affidavits submitted by the government substantially confirm the factual allegations presented in Nixon's Petition. Indeed, most of the basic assertions in the Declarations of Wiley Fairchild, John Baltar and Paul Holmes now have been affirmed by the government's own materials. These include:

1. That before Wiley Fairchild testified against Nixon, the prosecutors made statements to Wiley concerning the possibility of dropping the gratuity charge against him even though Wiley had pled guilty to that charge (Weingarten Aff., ¶ 2; Hess Aff., ¶ 2).

2. That the prosecutors made statements to Wiley Fairchild concerning their commitment to see that his son, Drew, was "treated fairly" and "was not punished by the State of Mississippi for his cooperation with the United States." (Weingarten Aff., ¶ 5). This commitment by the federal prosecutors to help Drew was a material undisclosed inducement to Wiley Fairchild.

3. That the prosecutors were assisted in jury selection at the Nixon trial by Wiley Fairchild's chief assistant, John Baltar (Weingarten Aff., ¶¶ 8-9).

4. That the prosecutors met with Wiley Fairchild during the Nixon trial to prepare and review his testimony, and that John Baltar took notes during that

review. In addition, the prosecutors understood that Baltar's notes would be used to prepare Wiley Fairchild to testify. (Weingarten Aff., ¶ 10.)

5. That the prosecutors discussed with Wiley Fairchild an executive pardon and the role of the prosecutor in apprising pardon officials "of Fairchild's cooperation with the Government." (Weingarten Affidavit, ¶ 3.)

6. That the prosecutors admitted to Paul Holmes -- after he reached a plea agreement -- that several of the charges against him could not have been proved at trial. (Weingarten Aff., ¶ 7.)

Third, despite these many points of agreement among the witnesses, the government's Response establishes the need for an evidentiary hearing. There remain a number of factual ambiguities that can be resolved only by a finder of fact following a full evidentiary presentation. For example, while Baltar and Wiley Fairchild remember the prosecutor promising Wiley to do what he could to help Fairchild's son Drew (Baltar Declaration, ¶ 5; Wiley Fairchild Declaration, ¶ 2), the prosecutor remembers only that he promised Wiley that he would treat Drew "fairly," and that he would see to it that Drew was not punished by the State of Mississippi for cooperating with the federal government. (Weingarten Aff., ¶ 5.)

Similarly, Wiley Fairchild remembers that the prosecutor led him to believe that the prosecutor would "would do everything he could to help me, including assisting in getting a pardon." Fairchild Declaration, ¶ 6. The prosecutor confirms that he discussed a possible pardon with Wiley, and also discussed the prosecutor's role in the pardon process, but denies promising to help Wiley get a pardon. Weingarten Aff., ¶ 3.

John Baltar remembers that when the prosecutor was preparing Wiley to testify at the Nixon trial, Baltar wrote out the "script" for Wiley's testimony based on the prosecutor's notes and the prosecutor reviewed that script. Baltar Declaration ¶ 11. The prosecutor confirms that the witness preparation session occurred, that Baltar took notes and that the prosecutor knew that those notes would be used to help prepare Fairchild to testify. The prosecutor does not recall, however, that he reviewed Baltar's notes, or script. Weingarten Aff., ¶ 10.

Upon a full evidentiary presentation, the Court may well conclude that these differences in recollection are more semantical than real -- for example, that there is no material difference between the prosecutor promising to do what he could to help Drew Fairchild and the prosecutor promising to see that Drew is treated fairly and is not punished by the State of Mississippi for cooperating with the United States. Most important, though, such issues must be resolved through an evidentiary hearing.

Fourth, the government does not dispute Petitioner's presentation of most of the controlling legal standards. Thus, the government does not quarrel with our statement of the prosecution's obligation not to present false testimony, Petitioner's Memorandum, pp. 28, 31-32, or to comply with the pretrial order under Brady v. Maryland, 373 U.S. 83 (1963) to disclose to Nixon "anything else that has been given or promised to any of the government's witnesses." Id. at 28-31.

The government also does not deny that a Brady violation involving nondisclosure of impeachment evidence requires vacating a conviction "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." United States v. Bagley, 105 S.Ct. 3375, 3384 (1985) (emphasis added). When that standard is applied to this case -- in which the government's proof was closely disputed and credibility was central -- the government's Brady violations loom large indeed.

Finally, the government does not dispute the principle that a "perjury trap" violates due process. [1]

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[1] The government does argue that the perjury trap contention was presented in Nixon's Petition for Rehearing en banc "without . . . persuading a single judge to rehear his case." Government Response, p. 27. The government fails to disclose that 11 of the 14 judges of the Fifth Circuit recused themselves from even considering Nixon's en banc petition. Nor does the government recognize that en banc petitions can be considered on the merits only "(1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the (Cont'd)

This Memorandum will not review each and every instance in which Petitioner and the government argue for different inferences from the available facts, or contend for a different application of the law to these facts. Those arguments are most properly presented to the Court during the evidentiary hearing that must be held. The balance of this Memorandum will be confined, therefore, to correcting inaccurate or incomplete statements of fact and law in the government's Response. [2]

### A. The Government's Factual Errors And Omissions

1. The government inaccurately contends that "many" of the issues raised in the Petition previously have been litigated. Government Response, p.1. Of the five enumerated claims, the first three were previously unknown to Nixon and never raised, while the allegation of a perjury trap has never been ruled on by a court. The prosecutorial misconduct alleged in the fifth claim is only slowly coming to light now.

2. The government notes repeatedly that Nixon made a profit on the Fairchild investment. Government Response, pp. 2-5. The government never discloses, however, that Wiley Fairchild paid two to three hundred dollars apiece for the three oil interests that he sold to Nixon for $9,500, which gave Wiley at least a 1,000 per cent profit after approximately five

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proceeding involves a question of exceptional importance." Fed. R. App. P. 35(a).

[2] Nixon also submits today a Motion for Discovery on several limited points and a supporting Memorandum. Upon completion of that discovery, Nixon will be ready to proceed to the evidentiary hearing.

years. Tr. 565-66. Nor does the government disclose Wiley's testimony, based on decades of experience, that an oil investment always entails risk and that he told Nixon about that risk. Tr. 569-71, 601. Equally, the government never discloses that one of the three oil interests purchased by Nixon earned no return at all.

3. The government stresses the backdating of the deeds for the oil interests bought by Nixon, implying all manner of misconduct in connection with that action. (Government Response, pp. 3-5). But the government never discloses that Carroll Ingram, a government witness who was Wiley's attorney, insisted that the deeds were backdated to reflect the actual date on which the transaction occurred. Tr. 1047-48.

4. The government expresses shock and dismay over Bud Holmes' decision to "pass" Drew's state court case "to the files," where it resided for a total of 33 days. Government Response, at 16-17. Regardless of the wisdom or folly of Holmes' action, the government never acknowledges the undisputed fact that Nixon neither suggested that course of action, nor approved of it, nor knew of it when it occurred.

5. The government twists the testimony of Bud Holmes in a subtle but significant manner. According to Holmes' testimony, Nixon said that Wiley Fairchild had asked Nixon to "put in a good word for . . . Drew." Tr. 737. The government inaccurately transforms that testimony into the supposed statement by Nixon that he was "'putting in a good word'" for Drew. Government Response, p. 12. [3] That transformation --

from reporting a request by Wiley that Nixon put in a good word and actually "putting in a good word" -- is an important one, which Holmes expressly repudiated in his recent Declaration: "I understood that Nixon simply was passing on to me the information that Wiley Fairchild had been asking about his son's case. I would have expected any friend of mine to mention to me that a member of the community had been asking about a case for which I was responsible." Holmes Declaration, ¶ 2. Most important, Holmes insists that he did not understand Nixon to be seeking "any preferential treatment or special favors for Drew Fairchild." Id. Thus, Nixon was not actually "putting in a good word" for Drew, but was informing Holmes that Wiley Fairchild had asked about Drew's case.

6. The government also insists that "[H]ad there not been Judge Nixon's call to Wiley Fairchild from Holmes' farm, Holmes would not have passed the case to the file in December 1982 (TR 754)." Government Response, p. 16. This assertion, however, is contradicted by the very page of Holmes' trial testimony that the government cites. Holmes testified on that page the "big motivating" reason why he passed Drew's case to the files was his concern over the impending accession of state court Judge Dickie McKenzie, who might not enforce the earlier plea agreement. The answer upon which the government evidently seeks to rely is, at best, unclear. [4] In any event, Holmes has stated

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[4] Holmes' testimony rely was interrupted by the prosecutor, so there is no way to be sure exactly what Holmes' answer was (Tr. 754-55):
(Cont'd)

further: "I was not influenced in any way in my handling of the Drew Fairchild matter by this brief exchange with Nixon. My office took no action -- nor failed to take any action -- with respect to the Drew Fairchild matter because of that brief exchange I had with Nixon." Holmes Declaration, ¶ 3.

7. The government emphasizes that Nixon telephoned Holmes after the April 1984 tape-recorded interview with the prosecutor. Government Response, pp. 18-19. But the government does not disclose that Nixon told the prosecutor at that April interview that he was going to call Holmes to try to figure out what the investigation was about. Tr. 1713. Thus, that contact by Nixon was not a surreptitious effort to cover his tracks, but was affirmatively disclosed beforehand to the prosecutor himself.

8. The government still has not disclosed the full extent of its targeting of Nixon during the 1983 investigation of the Petit Bois Island investigation. The government concedes now that it understood in 1983 that Nixon "could, _at_ _a_ _minimum_, be a witness" in that case. Government Response, p. 23 (emphasis

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Q: Had there not been the call to Wiley Fairchild, would you have moved to pass the case to files in December, 1982?

A: No, sir, I would have -- what I likely would have done --

Q: Don't testify to that.

A: I'll tell you what I would have done then.

Q: No, only what you did?

A: I passed it to the file is what I did.

added). But the government does not disclose that its agents were aggressively investigating the theory that the Petit Bois Island landowners had paid off Nixon.* The Affidavit of R. David Sanders, signed on September 12, 1983, describes an interview on July 20, 1983 with an FBI agent in Mississippi. (Attachment A). Sanders, who had sold the Petit Bois Island property to the Stocks and Lewis group, was questioned at that time concerning whether the civil case had been intentionally steered to Nixon and whether Nixon owned any land on Petit Bois Island or in another Stocks project. Sanders understandably found this questioning "bizarre and disturbing in its implications." Id, p. 2. The government continues to conceal from Nixon and from the Court the nature of its 1983 investigation of Nixon.

9. The government claims that "Petitioner's representations about Drew Fairchild are remarkably misleading," and argues that the letter written by the federal prosecutor on behalf of Drew Fairchild was "a neutral, factual representation of Drew's cooperation with the Government. It is anything but an effort 'to salvage the original plea bargain.'" Government Response, p. 32. But that letter is dated three days before a state court hearing at which Drew ultimately withdrew his guilty plea because Judge McKenzie announced he would not abide by the sentencing recommendation in the plea agreement. Attachment B (Order of March 8, 1985). John Baltar recalled that Drew's lawyer contacted the federal prosecutor to try to work out a deal to head off the threatened state sentence. Baltar Declaration, ¶ 6. Indeed, the government's witness at trial, Drew Fairchild,

confirmed that he sought the federal prosecution to block the threatened state prison sentence and that the federal prosecutor was obliging. Tr. 128-32.

Our point here is not that the federal prosecutor took extraordinary steps to protect the drug smuggler that Nixon was prosecuted for supposedly trying to aid -- although the irony of that contrast is deeply troubling. Rather, our concern is that the federal prosecutor took those steps after promising Wiley Fairchild, a key witness at trial, that the prosecutor would help his son. That promise should have been disclosed to the defense and the failure to disclose it unconstitutionally hampered Nixon's defense.

### B. The Government's Legal Errors And Omissions

1. The government concedes, as it must, that the prosecutor told Nixon in the tape-recorded interview of April 1984 that the government had no information that Nixon had anything to do with the Drew Fairchild case. The government insists that the prosecutor's statements could not have lulled Nixon into a perjury trap, however, because the prosecutor's statement was true at the time it was made. The government explains carefully that it had no "information" in April 1984 that Nixon had done anything improper, although it did have the "speculation that petitioner was given the mineral interests by Wiley in return for steering Drew's case to Holmes." Government Response, p. 43 (emphasis in original). This wafer-thin distinction, however, can hardly be sustained when the government

was willing to impanel a grand jury to investigate Nixon based largely on that "speculation." Indeed, the perjury trap decisions have been prompted by judicial revulsion over the use of such subtle distinctions to manufacture perjury offenses by individuals with no intention to lie.

2. The government characterizes as a "selective prosecution" argument our concern that Nixon was targeted because of his Petit Bois Island decision. Government Response, pp. 47-48. When we have completed discovery, we believe we will be able to make out a selective prosecution claim. Nevertheless, the government ignores Nixon's clear contention that this prosecution was motivated by vindictiveness and therefore is a violation of due process. See Petitioner's Memorandum, pp. 50-51. A claim of prosecutorial vindictiveness is distinct from a selective prosecution claim.

3. The government argues that a Jencks Act violation cannot be considered in reviewing a petition under 28 U.S.C. § 2255, insisting that Krilich v. United States, 502 F.2d 680 (7th Cir. 1974), has been undercut by Johnson v. United States, 805 F.2d 1284 (7th Cir. 1986). Judge Posner's opinion in Johnson, which involved a Rule 32 question, suggested in dictum that Krilich too freely allowed review of statutory violations on a § 2255 petition. But Johnson neither reversed Krilich nor excluded all review on § 2255 motions of statutory violations such as a Jencks Act violation. Rather, Johnson insisted that such statutory violations should be subject to review on a post-conviction motion if the violation involved "not only an

egregious but a highly prejudicial error." 805 F.2d at 1290. Consequently, this Court properly has jurisdiction over any Jencks Act violation in this case.

## CONCLUSION

Petitioner seeks the earliest available opportunity to conduct discovery and present his case at an evidentiary hearing.

Respectfully submitted,

Boyce Holleman /DOS
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ATTORNEYS FOR PETITIONER

Date: May 19, 1988

A

## AFFIDAVIT

STATE OF MISSISSIPPI

COUNTY OF HINDS

I, R. DAVID SANDERS, being first duly sworn, depose and say that:

On or about July 20, 1983, I was interviewed by Special Agent Cletus Blake, of the Jackson office of the Federal Bureau of Investigation. This interview was requested by Mr. Blake and was conducted at the Jackson offices of the Federal Bureau of Investigation. Mr. Blake had advised me in advance that the subject of the interview was to be the sale of property on Petit Bois Island to John Stocks. I participated in this interview without counsel.

In response to my questions, Mr. Blake stated that he was making no record of the interview other than his written notes. He also assured me that the investigation of which this interview was a part did not at that time, and would not in the future, focus on me as a subject.

Mr. Blake questioned me about the entire history of the Sanders family's ownership of the property on Petit Bois Island, including when and how it was acquired, the negotiations we had with the National Park Service and the negotiations and transaction with Mr. Stocks. In the course of the interview, I asked Mr. Blake what it was about the transaction with Mr. Stocks that had drawn the interest of the FBI. He replied that the sale to Stocks for $1,792,500.00 on December 31, 1979, and the Court's determination that, some five months later, the property was worth $6,120,000.00, suggested the possibility that some fraud ma have been practiced. Mr. Blake asked about my acquaintance with and knowledge of several persons, including John Stocks, Gene Lewis, Harold Lewis, and a Mr. Thompson, and another man whose name I cannot recall. He stated that these were the persons on whom the investigation was focused. He further stated that the request that he interview me had come from the Jacksonville, Florida, office of the United States Attorney.

Mr. Blake inquired extensively into the details of the contract between the Petit Bois, Inc. stockholders and Mr. Stock I pointed out to him several times that all of this information could be found in the record of the trial. He wanted me to recount these details for him, nevertheless. I explained the

terms of the contract for sale of Petit Bois, Inc. stock, the note and deed of trust, the provision for release of lots as they were sold, the down payments, assignments of notes, the escrow mechanism, etc. Mr. Blake asked about the appraisers used by defendants in the trial and seemed particularly interested in Louis Clark's role. He wanted to know how we had arrived at the value we placed on the property for sale to Mr. Stocks. I explained how we came to have our own appraisal made by Robert Viele, and how the sale price was negotiated.

Mr. Blake asked me how Judge Nixon came to hear this case. I replied that I assumed he was assigned the case in the normal course of things. Mr. Blake asked if we had had discussions about which judge might be "best" to hear the case, and whether there had been some thought that Judge Nixon would be more favorable to our position. He seemed to think that this case normally would have been heard by a Magistrate because it was a civil case. At this point, I asked Mr. Blake if he was a lawyer. He replied that he was a CPA, but not a lawyer. I told him thatI had had virtually nothing to do with the preparation for the trial inasmuch as I did not own the property when it was condemned, and suggested that the attorneys of record could give him more information along these lines. He asked who these attorneys were, and I gave him all the names. He asked me what I thought of Judge Nixon's conduct of the trial and grasp of the issues. I found this line of questioning somewhat bizarre and disturbing in its implications and told him so. Mr. Blake asked me if, to my knowledge, Judge Nixon had any interest in the property on Petit Bois Island or the property on Deer Island. I think he also inquired about any possible interest Judge Nixon might have in St. George Island. I told him I had no such knowledge and that I was frankly astounded by the suggestion.

Mr. Blake then inquired generally about the Deer Island transaction and about my other business interests, which I briefly described for him. This interview lasted about two hours. The tone of the interview was friendly and courteous, and Mr. Blake was not at all aggressive toward me in his questions.

This affiant is a resident of Hinds Couny, Mississippi.

R. David Sanders

R. David Sanders

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid on this the 12th day of September, 1983.

Notary Public

My Commission Expires: [illegible]

FILED
MAR 29 1985
Miriam Braun
CIRCUIT CLERK

Filed by Court on march 8. 1985 L.W. McK.

B

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS CAUSE NUMBER 10,041

REDDITT ANDREW FAIRCHILD DEFENDANT

## ORDER

ON THIS DAY this Cause came on to be heard upon the Defendant's Motion to Withdraw his Plea of Guilty, for the reason that certain inducements had been made to him in order to affectuate a Plea of Guilty, by prior administration, and the Court after considering the same, finds that the Defendant's Motion is well taken and should be sustained.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the previous Plea of Guilty be Withdrawn and a Plea of Not Guilty be entered.

SO ORDERED AND ADJUDGED on this the 8th day of March, A.D., 1985.

CIRCUIT COURT JUDGE

EXHIBIT N - 44

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                         MISSISSIPPI OIL AND GAS MONTHLY PRODUCTION LEDGER THROUGH DECEMBER
                                                         MONTH    OIL      GAS     WATER  STATUS DAYS PROD GRAV
------------------------------------------------------------------------------------------------------------------
  FIELD      GREENS CREEK FIELD                           JAN     2670   238004     830   F         31      51
  POOL       HOSSTON-HARPER GAS POOL                      FEB     2481   220415     697   F         28      51
  OPERATOR   GETTY OIL CO                                 MAR     2701   245884     715   F         31      51
  WELL NAME  ROGERS 28-11                                 APR     2450   226372     690   F         30      51
  WELL NO    1                                            MAY     2612   228458     739   F         31      51
* COUNTY     MARION                                       JUN     2374   221384     720   F         30      51
                                                          JUL     2288   208825     763   F         31      51
  CUMULATIVES TO 01/01/82          YTD CUMULATIVES        AUG     2045   184878     418   F         30      51
                                                          SEP     2080   190177     732   F         30      51
  OIL              22,808                   48,811        OCT     1884   158782     600   F         31      51
  GAS           1,804,747                4,171,211        NOV     1318   108383     415   F         30      51
  WATER             8,181                   12,758        DEC     1394   136852     449   F         31      51
                                                       ** TOTAL  26303  2308484    7508
------------------------------------------------------------------------------------------------------------------
  FIELD      GREENS CREEK FIELD                           JAN      938    81389     231   F         31      00
  POOL       HOSSTON-HARPER GAS POOL                      FEB      867    76500     220   F         28      00
  OPERATOR   GETTY OIL CO                                 MAR      826    75982     211   F         31      00
  WELL NAME  SIPP 20-8                                    APR      733    70050     232   P         30      00
  WELL NO    2-L                                          MAY      840    74240     218   F         31      00
  COUNTY     MARION                                       JUN      884    83557     210   F         30      00
                                                          JUL      884    85669     195   F         31      00
  CUMULATIVES TO 01/01/82          YTD CUMULATIVES        AUG      738    70980     221   F         31      00
                                                          SEP      831    84450     182   F         24      00
  OIL               2,595                   10,130        OCT       18     8455       8   P         04      00
  GAS             338,498                  939,185        NOV      579    83965     285   F         20      00
  WATER               834                    2,818        DEC      100     8072       0   F         08      00
                                                       ** TOTAL   7535   703880    2181
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  FIELD      GREENS CREEK FIELD                           JAN     1539   142139     354   F         31      48
  POOL       HOSSTON-HARPER GAS POOL                      FEB     1447   136208     378   F         28      48
  OPERATOR   HARKINS & CO                                 MAR     1597   144442     420   F         30      48
  WELL NAME  BARNES 8-10                                  APR     1554   147275     420   F         30      48
  WELL NO    1-LT                                         MAY     1560   158217     434   F         31      48
  COUNTY     MARION                                       JUN     1452   147018     408   F         29      48
                                                          JUL     1479   140845     434   F         31      49
  CUMULATIVES TO 01/01/82          YTD CUMULATIVES        AUG     1523   144773     414   F         31      49
                                                          SEP     1259   139157     360   F         30      49
  OIL              28,368                   43,803        OCT     1124   122242     324   F         27      49
  GAS           2,390,151                4,048,457        NOV     1313   136608     360   F         30      48
  WATER             6,083                   10,738        DEC     1390   141288     372   F         31      48
                                                       ** TOTAL  17237  1688306    4878
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  FIELD      GREENS CREEK FIELD                           JAN     1530   141107     368   F         31      48
  POOL       HOSSTON-HARPER GAS POOL                      FEB     1421   139329     378   F         28      48
  OPERATOR   HARKINS & CO                                 MAR      328    34443     165   F         07      48
  WELL NAME  BD. OF SUPERVISORS V 18-11                   APR     1487   154720     502   F         30      48
  WELL NO    2                                            MAY     1527   158814     498   F         31      48
  COUNTY     JEFFERSN DAVIS                               JUN     1409   148908     464   F         29      48
                                                          JUL     1439   144715     440   F         31      49
  CUMULATIVES TO 01/01/82          YTD CUMULATIVES        AUG     1390   139038     440   F         30      49
                                                          SEP     1183   130720     392   F         28      48
  OIL              55,330                   71,202        OCT     1301   138043     415   F         30      49
  GAS           4,898,468                8,800,512        NOV     1408   134334     420   F         30      50
  WATER            11,884                   16,788        DEC     1451   142377     434   F         31      49
                                                       ** TOTAL  15873  1602044    4812
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1204

EXHIBIT N - 45

Well name Charles E. Wil GU 28-1 Operator EXXON PORATION Permit No. 2746

Field HATTER'S POND Pool S-T-R S28, 12S, R1W Type

| (1980) | OIL/ COND. | GAS | WATER | (1981) | OIL/ COND. | GAS | WATER |
|---|---|---|---|---|---|---|---|
| JAN. | | | | JAN. | 0 | 0 | |
| FEB. | | | | FEB. | 0 | 0 | |
| MAR. | | | | MAR. | 0 | 0 | |
| APR. | | | | APR. | 0 | 0 | |
| MAY | | | | MAY | 0 | 0 | |
| JUN. | 2106 | 5657 | | JUN. | 0 | 0 | |
| JUL. | 1814 | 4872 | | JUL. | 0 | 0 | |
| AUG. | 0 | 0 | | AUG. | 0 | 0 | |
| SEPT. | 0 | 0 | | SEPT. | 0 | 0 | |
| OCT. | 0 | 0 | | OCT. | 52289 | 194207 | 0 |
| NOV. | 0 | 0 | | NOV. | 51232 | 186783 | 0 |
| DEC. | 0 | 0 | | DEC. | 51900 | 190876 | 0 |
| YRLY TOTALS | 3920 | 10529 | | YRLY TOTALS | 155421 | 571866 | 0 |
| CUMUL. TOTALS | 3920 | 10529 | | CUMUL. TOTALS | 159341 | 582395 | 0 |
| (1982) | | | | (1983) | | | |
| JAN. | 47489 | 174615 | 5 | JAN. | 39112 | 138271 | 340 |
| FEB. | 52284 | 178285 | 0 | FEB. | 30209 | 104796 | 89 |
| MAR. | 46325 | 151040 | 90 | MAR. | 32448 | 112833 | 235 |
| APR. | 18290 | 65249 | 14 | APR. | 32308 | 103340 | 397 |
| MAY | 37130 | 127186 | 100 | MAY | 33439 | 110103 | 568 |
| JUN. | 38419 | 145301 | 63 | JUN. | 30850 | 103071 | 143 |
| JUL. | 42802 | 171962 | 413 | JUL. | 39370 | 131954 | 116 |
| AUG. | 37271 | 145688 | 14 | AUG. | 42838 | 146974 | 543 |
| SEPT. | 37825 | 145223 | 81 | SEPT. | 17450 | 62332 | 251 |
| OCT. | 35807 | 128182 | 209 | OCT. | 33753 | 134533 | 382 |
| NOV. | 31677 | 118623 | 192 | NOV. | 40026 | 164533 | 298 |
| DEC. | 34650 | 123304 | 204 | DEC. | 38670 | 141546 | 246 |
| YRLY TOTALS | 459969 | 1674558 | 1385 | YRLY TOTALS | 410473 | 1453371 | 3507 |
| CUMUL. TOTALS | 619310 | 2256953 | 1385 | CUMUL. TOTALS | 1029783 | 3710324 | 4892 |

DEFENDANT'S EXHIBIT 2D

Rogers - 28-11
Sipp - 20-9

DEFENDANT'S EXHIBIT 21

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                         MISSISSIPPI OIL AND GAS MONTHLY PRODUCTION LEF  R THROUGH DECEMBER , 1981

                                                        MONTH    OIL        GAS      WATER  STATUS DAYS PROD GRAV
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 FIELD      GREENS CREEK FIELD                            JAN       0          0         0  CI          0    00
 POOL       FIFTH HOSSTON GAS POOL                        FEB       0          0         0  CI          0    00
 OPERATOR   HARKINS & CO                                  MAR       0          0         0  CI          0    00
 WELL NAME  BD  OF SUPERVISORS U 18-8                     APR       0          0         0  CI          0    00
 WELL NO    1-LT                                          MAY       0          0         0  CI          0    00
 COUNTY     JEFFERSN DAVIS                                JUN       0          0         0  CI          0    00
                                                          JUL       0          0         0  CI          0    00
 CUMULATIVES TO 01/01/81          YTD CUMULATIVES         AUG       0          0         0  CI          0    00
                                                          SEP       0          0         0  CI          0    00
 OIL                 1,983                   1,983        OCT       0          0         0  CI          0    00
 GAS             1,091,091               1,091,091        NOV       0          0         0  CI          0    00
 WATER              11,043                  11,043        DEC       0          0         0  CI          0    00
                                                    ** TOTAL        0          0         0
 --------------------------------------------------------------------------------------------------------------
 FIELD      GREENS CREEK FIELD                            JAN       0          0         0             00    00
 POOL       HOSSTON-HARPER GAS POOL                       FEB       0          0         0             00    00
 OPERATOR   GETTY OIL CO                                  MAR       0          0         0             00    00
 WELL NAME  ROGERS 28-11                                  APR    1602      88282       253  F          15    51
*WELL NO    1                                             MAY    1950     194120       645  F          31    51
 COUNTY     MARION                                        JUN    2548     193521       281  F          30    51
                                                          JUL    2710     209378       635  F          31    51
 CUMULATIVES TO 01/01/81          YTD CUMULATIVES         AUG    2687     215712       689  F          31    51
                                                          SEP    3463     214608       692  F          30    51
 OIL                     0                  22,608        OCT    2707     219792       648  F          31    51
 GAS                     0               1,804,747        NOV    2722     228328       653  F          30    51
 WATER                   0                   5,191        DEC    2819     242225       715  F          31    51
                                                    ** TOTAL    22608    1804747      5191
 --------------------------------------------------------------------------------------------------------------
 FIELD      GREENS CREEK FIELD                            JAN       0          0         0             00    00
 POOL       HOSSTON HARPER GAS POOL                       FEB       0          0         0             00    00
 OPERATOR   GETTY OIL CO                                  MAR       0          0         0             00    00
 WELL NAME  SIPP 20-9                                     APR       0          0         0             00    00
 WELL NO    2                                             MAY       0          0         0             00    00
 COUNTY     MARION                                        JUN       0          0         0             00    00
                                                          JUL       0          0         0             00    00
 CUMULATIVES TO 01/01/81          YTD CUMULATIVES         AUG       0          0         0             00    00
                                                          SEP       0          0         0             00    00
 OIL                     0                   2,595        OCT     123      11985        38  F          03    00
 GAS                     0                 235,498        NOV    1246     115171       361  F          30    00
 WATER                   0                     634        DEC    1226     108340       235  F          31    00
                                                    ** TOTAL     2595     235498       634
 --------------------------------------------------------------------------------------------------------------
 FIELD      GREENS CREEK FIELD                            JAN    1408     128969       310  F          31    48
 POOL       HOSSTON-HARPER GAS POOL                       FEB    1199     110252       270  F          27    48
 OPERATOR   HARKINS & CO                                  MAR    1384     125258       310  F          31    47
 WELL NAME  BARNES 8-10                                   APR    1330     119464       300  F          30    47
 WELL NO    1-LT                                          MAY    1333     121208       300  F          30    48
 COUNTY     MARION                                        JUN    1323     118568       300  F          30    48
                                                          JUL    1368     119948       310  F          31    48
 CUMULATIVES TO 01/01/81          YTD CUMULATIVES         AUG    1221     114205       278  F          28    47
                                                          SEP    1329     123448       300  F          30    49
 OIL                10,421                  26,366        OCT    1378     128877       310  F          31    48
 GAS               897,158               2,355,912        NOV    1277     122187       300  F          30    48
 WATER               2,461                   8,063        DEC    1397     128574       314  F          30    48
                                                    ** TOTAL    15945    1458750      3602
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# MISSISSIPPI OIL AND GAS MONTHLY PRODUCTION LEDGER THROUGH DECEMBER

FIELD GREENS CREEK FIELD
POOL HOSSTON-HARPER GAS POOL
OPERATOR GETTY OIL CO
WELL NAME ROGERS 28-11
WELL NO 1
* COUNTY MARION

| CUMULATIVES TO 01/01/83 | | YTD CUMULATIVES |
|---|---|---|
| OIL | 48,911 | 63,150 |
| GAS | 4,170,831 | 5,649,771 |
| WATER | 12,759 | 18,114 |

| MONTH | OIL | GAS | WATER | STATUS | DAYS PROD | GRAV |
|---|---|---|---|---|---|---|
| JAN | 2117 | 208462 | 738 | F | 31 | 51 |
| FEB | 1927 | 194854 | 734 | F | 28 | 51 |
| MAR | 1959 | 210295 | 774 | F | 31 | 51 |
| APR | 1627 | 179828 | 678 | F | 30 | 51 |
| MAY | 1632 | 189338 | 715 | F | 31 | 51 |
| JUN | 878 | 101558 | 401 | F | 30 | 51 |
| JUL | 597 | 87825 | 239 | F | 31 | 51 |
| AUG | 795 | 74091 | 287 | F | 31 | 51 |
| SEP | 607 | 58285 | 196 | F | 30 | 51 |
| OCT | 739 | 65367 | 228 | F | 31 | 51 |
| NOV | 769 | 69492 | 203 | F | 30 | 51 |
| DEC | 892 | 64747 | 184 | F | 28 | 51 |
| ** TOTAL | 14239 | 1478940 | 5355 | | | |

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FIELD GREENS CREEK FIELD
POOL HOSSTON-HARPER GAS POOL
OPERATOR GETTY OIL CO
WELL NAME SIPP 30-8
WELL NO 2-L
COUNTY MARION

| CUMULATIVES TO 01/01/83 | | YTD CUMULATIVES |
|---|---|---|
| OIL | 10,130 | 18,698 |
| GAS | 939,007 | 1,810,024 |
| WATER | 2,815 | 6,853 |

| MONTH | OIL | GAS | WATER | STATUS | DAYS PROD | GRAV |
|---|---|---|---|---|---|---|
| JAN | 916 | 86855 | 453 | F | 27 | 00 |
| FEB | 1125 | 113702 | 808 | F | 28 | 00 |
| MAR | 1088 | 105456 | 443 | F | 31 | 00 |
| APR | 983 | 99345 | 412 | F | 30 | 00 |
| MAY | 986 | 101249 | 413 | F | 31 | 51 |
| JUN | 656 | 58075 | 155 | F | 30 | 00 |
| JUL | 454 | 40764 | 195 | F | 31 | 00 |
| AUG | 583 | 70210 | 259 | F | 31 | 00 |
| SEP | 468 | 49931 | 200 | F | 30 | 00 |
| OCT | 480 | 49595 | 218 | F | 31 | 00 |
| NOV | 469 | 48459 | 187 | F | 30 | 00 |
| DEC | 380 | 49576 | 195 | F | 28 | 00 |
| ** TOTAL | 8568 | 871017 | 4038 | | | |

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FIELD GREENS CREEK FIELD
POOL HOSSTON-HARPER GAS POOL
OPERATOR HARKINS & CO
WELL NAME BARNES 8-10
WELL NO 1-LT
COUNTY MARION

| CUMULATIVES TO 01/01/83 | | YTD CUMULATIVES |
|---|---|---|
| OIL | 43,603 | 53,579 |
| GAS | 4,048,457 | 5,070,978 |
| WATER | 10,738 | 13,762 |

| MONTH | OIL | GAS | WATER | STATUS | DAYS PROD | GRAV |
|---|---|---|---|---|---|---|
| JAN | 1417 | 138994 | 372 | F | 31 | 49 |
| FEB | 1210 | 123029 | 329 | F | 28 | 50 |
| MAR | 1328 | 143091 | 370 | F | 31 | 50 |
| APR | 1283 | 135584 | 360 | F | 30 | 50 |
| MAY | 1247 | 134135 | 360 | F | 30 | 50 |
| JUN | 824 | 86511 | 251 | F | 30 | 49 |
| JUL | 464 | 39389 | 130 | F | 31 | 50 |
| AUG | 450 | 37602 | 124 | F | 30 | 47 |
| SEP | 309 | 29593 | 105 | F | 21 | 50 |
| OCT | 456 | 46333 | 168 | F | 31 | 49 |
| NOV | 478 | 48157 | 168 | F | 29 | 48 |
| DEC | 512 | 59103 | 259 | F | 31 | 50 |
| ** TOTAL | 9976 | 1022521 | 3014 | | | |

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FIELD GREENS CREEK FIELD
POOL HOSSTON-HARPER GAS POOL
OPERATOR HARKINS & CO
WELL NAME BD. OF SUPERVISORS U 16-11
WELL NO 2
COUNTY JEFFERSN DAVIS

| CUMULATIVES TO 01/01/83 | | YTD CUMULATIVES |
|---|---|---|
| OIL | 71,202 | 81,398 |
| GAS | 6,800,512 | 7,846,509 |
| WATER | 16,786 | 20,587 |

| MONTH | OIL | GAS | WATER | STATUS | DAYS PROD | GRAV |
|---|---|---|---|---|---|---|
| JAN | 1445 | 141593 | 434 | F | 31 | 49 |
| FEB | 1251 | 123368 | 385 | F | 28 | 50 |
| MAR | 1360 | 139955 | 434 | F | 31 | 50 |
| APR | 1285 | 129448 | 408 | F | 29 | 50 |
| MAY | 1348 | 138843 | 434 | F | 31 | 50 |
| JUN | 881 | 87550 | 294 | F | 30 | 50 |
| JUL | 428 | 39517 | 161 | F | 31 | 49 |
| AUG | 386 | 38794 | 155 | F | 30 | 48 |
| SEP | 398 | 48968 | 178 | F | 23 | 50 |
| OCT | 458 | 47305 | 241 | F | 31 | 49 |
| NOV | 481 | 49906 | 278 | F | 29 | 49 |
| DEC | 515 | 60875 | 403 | F | 31 | 50 |
| ** TOTAL | 10196 | 1045997 | 3801 | | | |

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                                                        MONTH    OIL      GAS     WATER  STATUS DAYS PROD GRAV
----------------------------------------------------------------------------------------------------------------
FIELD      GREENS CREEK FIELD                            JAN      810   111558     521    F          31     51
POOL       HOSSTON-HARPER GAS POOL                       FEB     1173   147443     572    F          28     51
OPERATOR   FLORIDA EXPLORATION CO                        MAR     1130   148137     585    F          31     51
WELL NAME  BARNES 28-1                                   APR      498    86902     479    F          30     51
WELL NO    1-L                                           MAY      820    93798     460    F          31     52
COUNTY     MARION                                        JUN      856   101744     520    F          30     50
                                                         JUL      794    86151     481    F          31     51
CUMULATIVES TO 01/01/84          YTD CUMULATIVES         AUG      721    86662     500    F          31     51
                                                         SEP      598    89142     487    F          30     51
OIL               23,775                  33,321         OCT      705    89685     440    F          31     52
GAS            2,803,525               4,058,865         NOV      838    84115     414    F          30     52
WATER             12,344                  18,238         DEC      703    86802     485    F          31     52
                                                     ** TOTAL    9546  1255340    5894
----------------------------------------------------------------------------------------------------------------
FIELD      GREENS CREEK FIELD                            JAN      993   118378     473    F          31     51
POOL       HOSSTON-HARPER GAS POOL                       FEB     1183   144129     487    F          28     51
OPERATOR   GETTY OIL CO                                  MAR     1112   136838     488    F          31     51
WELL NAME  ROGERS 28-11                                  APR     1001   112778     381    F          30     51
* WELL NO    1                                           MAY      888   101327     345    F          30     51
COUNTY     MARION                                        JUN      803   101875     384    F          30     51
                                                         JUL     1009   118994     407    F          31     51
CUMULATIVES TO 01/01/84          YTD CUMULATIVES         AUG     1068   131951     444    F          31     51
                                                         SEP      857    93611     343    F          30     51
OIL               63,150                  74,667         OCT      803    88299     329    F          31     51
GAS            5,649,771               6,984,427         NOV      853    82495     378    F          30     51
WATER             18,114                  22,900         DEC      823    83078     368    F          31     51
                                                     ** TOTAL   11517  1334656    4786
----------------------------------------------------------------------------------------------------------------
FIELD      GREENS CREEK FIELD                            JAN      698    87161     333    F          31     00
POOL       HOSSTON-HARPER GAS POOL                       FEB      815    89737     440    F          28     00
OPERATOR   GETTY OIL CO                                  MAR      776    95564     409    F          31     00
WELL NAME  SIPP 20-8                                     APR      576    72338     318    F          30     00
WELL NO    2-L                                           MAY      480    86142     295    F          30     00
COUNTY     MARION                                        JUN      504    68407     318    F          30     00
                                                         JUL      598    78086     371    F          31     00
CUMULATIVES TO 01/01/84          YTD CUMULATIVES         AUG      601    80459     278    F          31     00
                                                         SEP      428    52290     223    F          30     00
OIL               16,698                  25,129         OCT      320    61260     240    F          31     00
GAS            1,810,024               2,661,900         NOV      313    49803     224    F          30     00
WATER              6,853                  10,541         DEC      313    50531     241    F          31     00
                                                     ** TOTAL    8431   851876    3688
----------------------------------------------------------------------------------------------------------------
FIELD      GREENS CREEK FIELD                            JAN      787   113018     321    F          31     50
POOL       HOSSTON-HARPER GAS POOL                       FEB     1043   124458     318    F          28     50
OPERATOR   HARKINS & CO                                  MAR     1153   104524     291    F          30     50
WELL NAME  BARNES 8-10                                   APR      881    75318     242    F          30     50
WELL NO    1-LT                                          MAY      812    89375     284    F          31     50
COUNTY     MARION                                        JUN      671    71310     240    F          30     50
                                                         JUL      648    72232     240    F          30     41
CUMULATIVES TO 01/01/84          YTD CUMULATIVES         AUG      808    83095     317    F          31     50
                                                         SEP      882   102560     362    F          30     50
OIL               53,579                  63,621         OCT      768    89658     280    F          31     51
GAS            5,070,978               6,191,329         NOV      725    83868     281    F          28     51
WATER             13,783                  17,376         DEC      864   100841     385    F          31     48
                                                     ** TOTAL   10042  1120351    3522
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1985

Rogers 28-11

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                              MISSISSIPPI OIL AND GAS MONTHLY PRODUCTION LEDGER THROUGH SEPTEMBER
                                                                    MONTH    OIL      GAS     WATER  STATUS DAYS PROD GRAV
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FIELD      GREENS CREEK FIELD                                        JAN      318    46318     1559   F          31    52
POOL       HOSSTON-HARPER GAS POOL                                   FEB      183    32152     1433   F          28    52
OPERATOR   HARKINS & CO                                              MAR      106    17463      755   F          28    53
WELL NAME  TOLAR UNIT 18-6                                           APR       13     7170      103   F          20    53
WELL NO    1                                                         MAY        0      484       22   F          05    53
COUNTY     JEFFERSN DAVIS                                            JUN        0        0        0   CI          0    00
                                                                     JUL        0        0        0   CI          0    00
CUMULATIVES TO 01/01/88            YTD CUMULATIVES                   AUG        0        0        0   CI          0    00
                                                                     SEP        0        0        0   CI          0    00
OIL             77,759                     78,387
GAS          8,383,007                  8,486,594
WATER           27,974                     31,846
                                                                  ** TOTAL    628   103587     3872
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FIELD      GREENS CREEK FIELD                                        JAN      394    57610      265   F          31    00
POOL       HOSSTON-HARPER GAS POOL                                   FEB      358    50857      253   F          28    00
OPERATOR   RIVER PRODUCTION CO., INC.                                MAR      383    58019      288   F          31    00
WELL NAME  FRANK WILSON BUCKLEY 21-13                                APR      382    52723      282   F          30    00
WELL NO    1                                                         MAY      381    53717      315   F          31    00
COUNTY     MARION                                                    JUN      330    49499      243   F          30    00
                                                                     JUL      337    49580      275   F          31    00
CUMULATIVES TO 01/01/88            YTD CUMULATIVES                   AUG      331    49853      272   F          31    51
                                                                     SEP      308    48947      288   F          30    51
OIL             16,038                     19,222
GAS          1,846,059                  2,315,859
WATER            8,533                     11,013
                                                                  ** TOTAL   3184   469800     2480
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FIELD      GREENS CREEK FIELD                                        JAN      707    86838      328   F          31    51
POOL       HOSSTON-HARPER GAS POOL                                   FEB      635    77890      260   F          28    51
OPERATOR   TEXACO PRODUCING INC                                      MAR      725    83076      232   F          31    51
WELL NAME  ROGERS 28-11                                              APR      745    86887      242   F          30    51
WELL NO    1                                                         MAY      788    91003      254   F          31    51
COUNTY     MARION                                                    JUN      722    88238      275   F          30    00
                                                                     JUL      734    87951      230   F          31    51
CUMULATIVES TO 01/01/88            YTD CUMULATIVES                   AUG      724    90975      237   F          31    51
                                                                     SEP      612    83177      108   F          30    51
OIL             74,636                     81,016
GAS          6,985,068                  7,760,881
WATER           22,900                     25,066
                                                                  ** TOTAL   6380   775813     2166
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FIELD      GREENS CREEK FIELD                                        JAN      328    53781      249   F          31    00
POOL       HOSSTON-HARPER GAS POOL                                   FEB      342    48034      227   F          28    00
OPERATOR   TEXACO PRODUCING INC                                      MAR      423    53833      181   F          31    00
WELL NAME  SIPP 20-8                                                 APR      424    52967      278   F          30    00
WELL NO    2-L                                                       MAY      422    56058      271   F          31    00
COUNTY     MARION                                                    JUN      385    53168      284   F          30    00
                                                                     JUL      391    56047      288   F          31    00
CUMULATIVES TO 01/01/88            YTD CUMULATIVES                   AUG      385    52441      285   F          31    00
                                                                     SEP      265    38001      180   F          30    00
OIL             25,130                     28,495
GAS          2,662,511.                 3,126,819
WATER           10,541                     12,807
                                                                  ** TOTAL   3365   464308     2266
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Well name ______________ ) ____ Operator ______________ ) ____ Permit No. 2746

Field ______________ Pool ______________ S-T-R ______________ Type ______________

| ( 1984 ) | OIL/ COND. | GAS | WATER | ( 1985 ) | OIL/ COND | GAS | WATER |
|---|---|---|---|---|---|---|---|
| JAN. | 39156 | 145171 | 343 | JAN. | 48437 | 198937 | 433 |
| FEB. | 21590 | 74508 | 271 | FEB. | 42319 | 171398 | 637 |
| MAR. | 23097 | 78572 | 382 | MAR. | 45345 | 180443 | 737 |
| APR. | 27685 | 101672 | 425 | APR. | 36282 | 126970 | 375 |
| MAY | 39404 | 152175 | 634 | MAY | 43377 | 156394 | 479 |
| JUN. | 41836 | 164117 | 699 | JUN. | 39252 | 149778 | 616 |
| JUL. | 39193 | 149303 | 388 | JUL. | 38070 | 145551 | 621 |
| AUG. | 27742 | 103479 | 188 | AUG. | 18738 | 60773 | 239 |
| SEPT | 23891 | 86052 | 196 | SEPT. | 22049 | 73688 | 246 |
| OCT. | 48736 | 186524 | 454 | OCT. | | | |
| NOV. | 46565 | 182740 | 436 | NOV. | | | |
| DEC. | 51435 | 198299 | 499 | DEC. | | | |
| YRLY TOTALS | 430330 | 1622612 | 4909 | YRLY TOTALS | | | |
| CUMUL. TOTALS | 1460713 | 5332836 | 9801 | CUMUL. TOTALS | | | |

| ( 1986 ) | | | | ( 1987 ) | | | |
|---|---|---|---|---|---|---|---|
| JAN. | | | | JAN. | | | |
| FEB. | | | | FEB. | | | |
| MAR. | | | | MAR. | | | |
| APR. | | | | APR. | | | |
| MAY | | | | MAY | | | |
| JUN. | | | | JUN. | | | |
| JUL. | | | | JUL. | | | |
| AUG. | | | | AUG. | | | |
| SEPT | | | | SEPT. | | | |
| OCT. | | | | OCT. | | | |
| NOV. | | | | NOV. | | | |
| DEC. | | | | DEC. | | | |
| YRLY TOTALS | | | | YRLY TOTALS | | | |
| CUMUL. TOTALS | | | | CUMUL. TOTALS | | | |

| GAS | |
|---|---|
| Utilization | Mcf |
| Producer's field operations FIELD FUEL | 2157 |
| Vented to Atmosphere Non hydrocarbon gas ACID GAS | [illegible] |
| Hydrocarbon gas | -- |
| Shrinkage 12% CONDENSATE | 41765 |
| Others (denote) METER DIFFERENCE | [illegible] |
| Others (denote) PLANT FUEL | 58259 |
| Deliveries to transporter | |
| Name of company / Address | |
| UNITED GAS PIPELINE CO., 3350 SUNCREST RD.<br>EIGHT MILE, AL<br>36613 | |
| Total | 622,711 |

| CONDENSATE | |
|---|---|
| Utilization | Barrels |
| Producer's field operations | |
| [illegible] | |
| Others (denote) | |
| Deliveries to transporter | |
| Name of company / Address | |
| HESS PIPELINE CO., P.O. BOX 342, PURVIS, MS 39475 | 270864 |
| EXXON CO. USA, P.O. BOX 60626, NEW ORLEANS, LA 70160 | -- |
| GETTY OIL CO., P.O. BOX 16070, MOBILE, LA 36616 | 50 |
| Total | 270914 |
| Utilization of produced water | Barrels |
| Injection by disposal well | |
| Others (denote) TOTAL WATER PRODUCED | 3423 |
| Total | 3423 |

Remarks

Executed this the 23 day of OCTOBER, 1985

L. L. Babbitt
Signature of Affiant

State of TEXAS

County of HARRIS

Before me, the undersigned authority, on this day personally appeared L. L. BABBITT known to me to be the person whose name is subscribed to the above instrument, who being by me duly sworn on oath states, that he is duly authorized to make the above report and that he has knowledge of the facts stated therein, and that said report is true and correct.

Subscribed and sworn to before me this ______ day of ____________, 19____

SEAL

My commission expires ____________

Notary Public in and for HARRIS

County, TEXAS

## INSTRUCTIONS Read Carefully and Comply Fully

This report shall be filed in DUPLICATE with the State Oil and Gas Board on or before the 28th day of each calendar month, and shall be complete as to data covering the calendar month next preceding the date of filing.

In unitized fields, indicate total number of wells utilized in unit operations during the month.

The addresses of the producer, as required on this report, shall be clear and definite as to street number, City, and State.

All volumes of gas shall be reported in Mcf computed at 14.65 psia pressure and 60° F. Do not use fractions of Mcf in this report.

All amounts of condensate shall be reported in barrels of 42 U.S. gallons. Make a separate report for each field or pool. Under Well Status, use the following symbols: (F) Flowing; (P) Pumping; (G) Gas Lift; (SI) Shut In; (TA) Temporarily Abandoned; (NW) New Well; and (PA) Plugged and Abandoned Well.

## GAS

| Utilization | Mcf |
|---|---|
| Producers field operations | 3433 |
| Vented to Atmosphere Non-hydrocarbon gas – ACID GAS | 74104 |
| Hydrocarbon gas | -0- |
| Shrinkage 125 CONDENSATE | 101316 |
| Others (denote) METER DIFFERENCE | 532931 |
| Others (denote) PLANT FUEL | 61591 |
| Deliveries to transporter | |
| Name of company / Address | |
| UNITED GAS PIPELINE CO., 3350 SUNCREST RD. | |
| EIGHT MILE, AL | |
| 36613 | |
| | |
| Total | 773375 |

## CONDENSATE

| Utilization | Barrels |
|---|---|
| Producer field operation | |
| Others (denote) | |
| Others (denote) | |
| Deliveries to transporter | |
| Name of company / Address | |
| HESS PIPELINE CO., P.O. BOX 332, PURVIS, MS 39475 | 31697 |
| EXXON CO. USA, P.O. BOX 60626, NEW ORLEANS, LA 70160 | -0- |
| GETTY OIL CO., P.O. BOX 16878, MOBILE, LA 36616 | 50 |
| Total | 31747 |

| Utilization of produced water | Barrels |
|---|---|
| Injection by disposal well | |
| Others (denote) TOTAL WATER PRODUCED | 7776 |
| Total | 7776 |

Remarks

Executed this the 20 day of SEPTEMBER, 1985.

State of TEXAS

County of HARRIS

Signature of Affiant

Before me, the undersigned authority, on this day personally appeared L. L. BEBAITT known to me to be the person whose name is subscribed to the above instrument, who being by me duly sworn on oath states, that he is duly authorized to make the above report and that he has knowledge of the facts stated therein, and that said report is true and correct.

Subscribed and sworn to before me this 23 day of September, 1985

CHRISSANDRA A. WILLIAMS
Notary Public, State of Texas
My Commission Expires 2-11-89

Chrissandra A. Williams

SEAL

Notary Public in and for HARRIS

County, TEXAS

My commission expires

### INSTRUCTIONS Read Carefully and Comply Fully

This report shall be filed in DUPLICATE with the State Oil and Gas Board on or before the 20th day of each calendar month, and shall be complete as to data covering the calendar month next preceding the date of filing.

In unitized fields, indicate total number of wells utilized in unit operations during the month.

The addresses of the producer, as required on this report, shall be clear and definite as to street number, City, and State.

All volumes of gas shall be reported in Mcf computed at 14.65 psia pressure and 60° F. Do not use fractions of Mcf in this report.

All amounts of condensate shall be reported in barrels of 42 U.S. gallons. Make a separate report for each field or pool. Under Well Status, use the following symbols: (F) Flowing; (P) Pumping; (G) Gas Lift; (SI) Shut In; (TA) Temporarily Abandoned; (NW) New Well; and (PA) Plugged and Abandoned Well.

| GAS | |
|---|---|
| Utilization | Mcf |
| Producers field operations | 3801 |
| Vented to Atmosphere Non-hydrocarbon gas ACID GAS | 67494 |
| Hydrocarbon gas | -0- |
| Shrinkage 12% CONDENSATE | 99058 |
| Others (denote) METER DIFFERENCE | 35745 |
| Others (denote) PLANT FUEL | 60585 |
| Fuel GAS TO Comp | 17324 |
| Deliveries to transporter<br>Name of company / Address | |
| UNITED GAS PIPELINE CO., 3350 SUNCREST RD.<br>EIGHT MILE, AL<br>36613 | 561998 |
| Total: | 846005 |

| CONDENSATE | |
|---|---|
| Utilization | Barrels |
| Producer field operation | |
| Others (denote) | |
| Others (denote) | |
| Deliveries to transporter<br>Name of company / Address | |
| HESS PIPELINE CO., P.O. BOX 332, PURVIS, MS 39475 | 297076 |
| EXXON CO. USA, P.O. BOX 60626, NEW ORLEANS, LA 70160 | -0- |
| GETTY OIL CO., P.O. BOX 16878, MOBILE, LA 36616 | 126 |
| Total | 24720 |
| Utilization of produced water | Barrels |
| Injection by disposal well | |
| Others (denote) | 3940 |
| Total | 3940 |

Remarks

Executed this the 22 day of AUGUST, 19 85

State of TEXAS

County of HARRIS

✓ L L Babbitt
Signature of Affiant

Before me, the undersigned authority, on this day personally appeared L L BABBITT known to me to be the person whose name is subscribed to the above instrument, who being by me duly sworn on oath states, that he is duly authorized to make the above report and that he has knowledge of the facts stated therein, and that said report is true and correct.

Subscribed and sworn to before me this 23 day of August, 19 85

Chrissandra A. Williams

SEAL

CHRISSANDRA A. WILLIAMS
Notary Public, State of Texas

My commission expires My Commission Expires 2-11-89

Notary Public in and for HARRIS

County, TEXAS

## INSTRUCTIONS Read Carefully and Comply Fully

This report shall be filed in DUPLICATE with the State Oil and Gas Board on or before the 28th day of each calendar month, and shall be complete as to data covering the calendar month next preceding the date of filing.

In unitized fields, indicate total number of wells utilized in unit operations during the month.

The addresses of the producer, as required on this report, shall be clear and definite as to street number, City, and State.

All volumes of gas shall be reported in Mcf computed at 14.65 psia pressure and 60° F. Do not use fractions of Mcf in this report.

All amounts of condensate shall be reported in barrels of 42 U.S. gallons. Make a separate report for each field or pool. Under Well Status, use the following symbols: (F) Flowing; (P) Pumping; (G) Gas Lift; (SI) Shut In; (TA) Temporarily Abandoned; (NW) New Well; and (PA) Plugged and Abandoned Well.

FORM ( 16
See instructions on reverse side of form
Rev. 12-84

## STATE OIL AND GAS BOARD OF ALABA

420 Hackberry Lane
P. O. Box O, University Station
Tuscaloosa, Alabama 35486

## PRODUCER'S MONTHLY REPORT FROM GA ELLS

(file in duplicate)

Month July, 19 85

Field HATTER'S POND County MOBILE
Operator GETTY OIL CO./ TEXACO INC Address P. O. BOX 52332 City HOUSTON State TEXAS Zip 77052
Person to contact regarding this report L. L. BOBBITT Phone number 713-650-5794

| | | | | PRODUCTION | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | WATER (BBLS) | GAS (Mcf) | | CONDENSATE (BARRELS) | | | | |
| Pool<br>Well name and number | Permit no. | Well Status | No. days producing | Total water produced | Total gas production F.W.S.V.* | Total sales gas | Total condensate produced | Total condensate on hand beginning of month | Total condensate to transporter | Total condensate on hand end of month | Gas condensate ratio (cu. ft. per barrel) |
| CREOLA MINERALS 35-11 #3 | 3277 | F | 31 | 405 | 126745 | 59172 | 33031 | 1076 | 33031 | 1076 | |
| CREOLA MINERALS 33-16 #1 | 3451 | F | 26 | 173 | 38433 | 16,323 | 11035 | 372 | 11025 | 382. | |
| | | | | *(PROD. - COND. USED FOR TREATING = ACTUAL PROD). | | | | | | | |
| | | | | (11035 - 10 = 11025) | | | | | | | |
| | | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | |
| | | | | (11025 - 10 = 11015) | | | | | | | |
| D. C. BALDWIN 21-15 #1 | 3697 | F | 31 | 804 | 119,534 | 57,738 | 28,495 | 994 | 28495 | 994 | |
| ADAMS 9-16 #1 | 3995 | F | 31 | 407 | 88460 | 41,553 | 22,397 | 712 | 22397 | 712 | |
| BD. OF SCH. COMM 16-7 #1 | 2545 | F | 3 | 3 | 2261 | 1,256 | 344 | 394 | 271 | 467 | |
| | | | | *(PROD. - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | |
| | | | | (344 - 76 = 268) | | | | | | | |
| | | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | |
| | | | | (271 - 76 = 195) | | | | | | | |
| Totals | ╳ | ╳ | ╳ | 3940 | [illegible] | 561948 | 297147 | 9827 | 297076 | 9948 | ╳ |

FORM OGB-10
See instructions on reverse side of form
Rev. 12 84

STATE OIL AND GAS BOARD OF ALABAMA
430 Hackberry Lane
P. O. Box O, University Station
Tuscaloosa, Alabama 35486

PRODUCER'S MONTHLY REPORT FROM S WELLS
(file in duplicate)
Month July, 19

Field HATTER'S POND County MOBILE
Operator GETTY OIL CO. Address P. O. BOX 52332 City HOUSTON State TEXAS Zip 77052
Person to contact regarding this report L. L. BOBBITT Phone number 713-659-5794

PRODUCTION

| | | | | WATER (BBLS) | GAS (Mcf) | | CONDENSATE (BARRELS) | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Pool<br>Well name and number | Permit no. | Well Status | No. days producing | Total water produced | Total gas production F.W.S.V.* | Total sales gas | Total condensate produced | Total condensate on hand beginning of month | Total condensate to transporter | Total condensate on hand end of month | Gas condensate ratio (cu. ft. per barrel) |
| D. C. BALDWIN 15-6 #1 | 2270 | F | 31 | 372 | 171301 | 82478 | 40516 | 1505 | 40497 | 1524 | |
| | | | | *(PROD. - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | |
| | | | | (40516 - 20 = 40496) | | | | | | | |
| | | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | |
| | | | | (40497 - 20 = 40477) | | | | | | | |
| CREOLA MINERALS 2-6 #1 | 2740 | F | 31 | 554 | 196151 | 91,495 | 50293 | 1510 | 50293 | 1510. | |
| | | | | | | | | | | | |
| G. RADCLIFF 17-7 #1 | 2961 | F | 31 | 31 | 23429 | 12,619 | 1796 | 44 | 1787 | 53 | |
| | | | | *(PROD. - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | |
| | | | | (1796 - 10 = 1786) | | | | | | | |
| | | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | |
| | | | | (1787 - 10 = 1777) | | | | | | | |
| WILKIE, G. U. 28 #1 | 2746 | F | 31 | 621 | 145,551 | 70,200 | 38070 | 1435 | 38,070 | 1,435 | |
| | | | | *(PROD. - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | |
| | | | | | | | | | | | |
| | | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| Totals | ☒ | ☒ | ☒ | | | | | | | | ☒ |

FORM [illegible]
See instructions on reverse side of form
Rev. 12-84

STATE OIL AND GAS BOARD OF ALABAMA
420 Hackberry Lane
P. O. Box O, University Station
Tuscaloosa, Alabama 35486

# PRODUCER'S MONTHLY REPORT FROM GAS WELLS

(file in duplicate)

Month [illegible], 19 [illegible]

Field HATTER'S POND County MOBILE

Operator GETTY OIL CO. [illegible] Address P. O. BOX 52332 City HOUSTON State TEXAS Zip 77052

Person to contact regarding this report L. L. BOBBITT Phone number 713-650-5794

## PRODUCTION

| Pool<br>Well name and number | Permit no. | Well Status | No. days producing | WATER (BBLS)<br>Total water produced | GAS (Mcf)<br>Total gas production F.W.S.V.* | GAS (Mcf)<br>Total sales gas | CONDENSATE (BARRELS)<br>Total condensate produced | CONDENSATE (BARRELS)<br>Total condensate on hand beginning of month | CONDENSATE (BARRELS)<br>Total condensate to transporter | CONDENSATE (BARRELS)<br>Total condensate on hand end of month | Gas condensate ratio (cu. ft. per barrel) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| PETER KLEIN 3-14 #1 | 1978 | F | -0- | -0- | -0- | -0- | -0- | -0- | -0- | -0- | |
| | | | *(PROD - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | | |
| | | | | | | | | | | | |
| | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | | |
| | | | | | | | | | | | |
| E. L. HATTER 4-10 #2 | 2629 | F | 26 | 41 | 10898 | 5443 | 2209 | 80 | 2209 | 80 | |
| | | | *(PROD. - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | | |
| | | | | | | | | | | | |
| | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | | |
| | | | | | | | | | | | |
| CREOLA MINERALS 10-11 #3 | 3213 | F | 31 | 107 | 229954 | 108143 | 61082 | 1448 | 61082 | 1448 | |
| | | | | | | | | | | | |
| CREOLA MINERALS 34-10 #1 | 2735 | F | 31 | 422 | 32265 | 15578 | 7929 | 257 | 7919 | 267 | |
| | | | *(PROD - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | | |
| | | | (7929 - 10 = 7919) | | | | | | | | |
| | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | | |
| | | | (7919 - 10 = 7909) | | | | | | | | |
| | | | | | | | | | | | |
| Totals | ☒ | ☒ | ☒ | | | | | | | | ☒ |

# EXHIBIT N - 46

[illegible]
[illegible]
Rev. 12-84

[illegible] STATE OIL AND GAS BOARD OF ALABAMA

420 Hackberry Lane
P. O. Box O University Station
Tuscaloosa, Alabama 35486

PRODUCER'S MONTHLY REPORT FROM GAS WELLS
(file in duplicate)

Month August, 1985

Field HATTER'S POND County MOBILE
Operator GETTY OIL CO. Address P. O. BOX 52332 City HOUSTON State TEXAS Zip 77052
Person to contact regarding this report L. L. BOBBITT Phone number 713-659-5794

PRODUCTION

| | | | | WATER (BBLS) | GAS (Mcf) | | CONDENSATE (BARRELS) | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Pool<br>Well name and number | Permit no. | Well Status | No. days producing | Total water produced | Total gas production F.W.S.V.* | Total sales gas | Total condensate produced | Total condensate on hand beginning of month | Total condensate to transporter | Total condensate on hand end of month | Gas condensate ratio (cu. ft. per barrel) |
| D. C. BALDWIN 15-6 #1 | 2270 | F | 29 | 441 | 164872 | 61693 | 39150 | 1524 | 39204 | 1,470 | |
| | | | | *(PROD. - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | |
| | | | | (39150 - 20 = 39130) | | | | | | | |
| | | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPLINE SALES) | | | | | | | |
| | | | | (39204 - 20 = 39184) | | | | | | | |
| CREOLA MINERALS 2-6 #1 | 2740 | F | 31 | 371 | 302924 | 125408 | 74018 | 1510 | 73829 | 1699 | |
| G. RADCLIFF 17-7 #1 | 2961 | F | 23 | 21 | 18201 | 8603 | 1278 | 53 | 1285 | 46 | |
| | | | | *(PROD. - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | |
| | | | | (1278 - 10 = 1268) | | | | | | | |
| | | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPLINE SALES) | | | | | | | |
| | | | | (1285 - 10 = 1275) | | | | | | | |
| WILKIE, G. U. 28 #1 | 2746 | F | 20 | 239 | 60773 | 24082 | 18738 | 1435 | 18972 | 1201 | |
| | | | | *(PROD. - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | |
| | | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPLINE SALES) | | | | | | | |
| Totals | ☒ | ☒ | ☒ | | | | | | | | ☒ |

FORM GB-10
See Instructions on reverse side of form
Rev. 12-84

STATE OIL AND GAS BOARD OF ALABAMA
420 Hackberry Lane
P. O. Box O, University Station
Tuscaloosa, Alabama 35486

STATE OIL & GAS BOARD OF ALABAMA
SEP 27 1985

## PRODUCER'S MONTHLY REPORT FROM GAS WELLS

(file in duplicate)

Month August 19 85

Field HATTER'S POND County MOBILE
Operator GETTY OIL CO. Address P. O. BOX 52332 City HOUSTON State TEXAS Zip 77052
Person to contact regarding this report L. L. BOBBITT Phone number 713-650-5794

PRODUCTION

| Pool<br>Well name and number | Permit no. | Well Status | No. days producing | WATER (BBLS) Total water produced | GAS (Mcf) Total gas production F.W.S.V.* | GAS (Mcf) Total sales gas | CONDENSATE (BARRELS) Total condensate produced | Total condensate on hand beginning of month | Total condensate to transporter | Total condensate on hand end of month | Gas condensate ratio (cu. ft. per barrel) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| PETER KLEIN 3-14 #1 | 1978 | F | -0- | -0- | -0- | -0- | -0- | -0- | -0- | -0- | |
| | | | *(PROD - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | | |
| | | | | | | | | | | | |
| | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | | |
| | | | | | | | | | | | |
| E. L. HATTER 4-10 #2 | 2629 | F | 30 | 32 | 10856 | 4842 | 2032 | 50 | 2007 | 75 | |
| | | | *(PROD. - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | | |
| | | | | | | | | | | | |
| | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | | |
| | | | | | | | | | | | |
| CREOLA MINERALS 10-11 #3 | 3213 | F | 31 | 566 | 285487 | 167136 | 68442 | 1448 | 68430 | 1460 | |
| | | | | | | | | | | | |
| CREOLA MINERALS 34-10 #1 | 2735 | F | 30 | 4318 | 26390 | 11013 | 6667 | 267 | 6688 | 246 | |
| | | | *(PROD - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | | |
| | | | (6667 - 10 = 6657) | | | | | | | | |
| | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | | |
| | | | (6688 - 10 = 6678) | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| Totals | ☒ | ☒ | ☒ | | | | | | | | ☒ |

FORM OGB-16
See Instructions on
reverse side of form
Rev. 12-84

STATE OIL AND GAS BOARD OF ALABAMA

420 Hackberry Lane
P. O. Box O, University Station
Tuscaloosa, Alabama 35486

PRODUCER'S MONTHLY REPORT FROM GAS WELLS
(file in duplicate)

Month August 19 85

Field HATTER'S POND County MOBILE
Operator GETTY OIL CO. Address P. O. BOX 52332 City HOUSTON State TEXAS Zip 77052
Person to contact regarding this report L. L. BOBBITT Phone number 713-650-5794

PRODUCTION

| Pool<br>Well name and number | Permit no. | Well Status | No. days producing | WATER (BBLS)<br>Total water produced | GAS (Mcf)<br>Total gas production F.W.S.V.* | GAS (Mcf)<br>Total sales gas | CONDENSATE (BARRELS)<br>Total condensate produced | CONDENSATE (BARRELS)<br>Total condensate on hand beginning of month | CONDENSATE (BARRELS)<br>Total condensate to transporter | CONDENSATE (BARRELS)<br>Total condensate on hand end of month | Gas condensate ratio (cu. ft. per barrel) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| CREOLA MINERALS 35-11 #3 | 3277 | F | 31 | 756 | 125303 | 50442 | 34060 | 1076 | 34033 | 1053 | |
| | | | | | | | | | | | |
| CREOLA MINERALS 33-16 #1 | 3451 | F | 31 | 91 | 67342 | 25389 | 18970 | 382 | 18902 | 450 | |
| | | | | *(PROD. - COND. USED FOR TREATING = ACTUAL PROD). | | | | | | | |
| | | | | (18970 - 10 = 18960) | | | | | | | |
| | | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | |
| | | | | (18902 - 10 = 18892) | | | | | | | |
| D. C. BALDWIN 21-15 #1 | 3697 | F | 31 | 435 | 118800 | 49438 | 28070 | 994 | 28103 | 961 | |
| | | | | | | | | | | | |
| ADAMS 9-16 #1 | 3995 | F | 31 | 506 | 99622 | 40351 | 26201 | 712 | 26185 | 728 | |
| | | | | | | | | | | | |
| BD. OF SCH. COMM 16-7 #1 | 2545 | F | 2 | -0- | 512 | 283 | 6 | 467 | 9 | 464 | |
| | | | | *(PROD. - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | |
| | | | | | | | | | | | |
| | | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| Totals | ☒ | ☒ | ☒ | 7776 | 1255082 | 516636 | 317602 | 9948 | 317697 | 9853 | ☒ |

1221

FORM [illegible] 15
See instructions on reverse side of form
Rev. 12-84

## STATE OIL AND GAS BOARD OF ALABAMA

438 Hackberry Lane
P. O. Box O, University Station
Tuscaloosa, Alabama 35486

Page 2 of [illegible]

## PRODUCER'S MONTHLY REPORT FROM GAS WELLS

(file in duplicate)

Month September, 19[illegible]

Field HATTER'S POND County MOBILE
Operator GETTY OIL CO./TEXACO INC. Address P. O. BOX 52332 City HOUSTON State TEXAS Zip 77052
Person to contact regarding this report L. L. BOBBITT Phone number 713-650-5794

PRODUCTION

| | | | | WATER (BBLS) | GAS (Mcf) | | CONDENSATE (BARRELS) | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Pool / Well name and number | Permit no. | Well Status | No. days producing | Total water produced | Total gas production F.W.S.V.* | Total sales gas | Total condensate produced | Total condensate on hand beginning of month | Total condensate to transporter | Total condensate on hand end of month | Gas condensate ratio (cu. ft. per barrel) |
| CREOLA MINERALS 35-11 #3 | 3277 | F | 30 | 683 | 117020 | 45437 | 31137 | 1053 | 30631 | 1559 | |
| CREOLA MINERALS 33-16 #1 | 3451 | F | 29 | 49 | 46106 | 16868 | 12446 | 450 | 12298 | 598 | |
| | | | | * (PROD. - COND. USED FOR TREATING = ACTUAL PROD). | | | | | | | |
| | | | | (12446-10 = 12436) | | | | | | | |
| | | | | * (TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | |
| | | | | (12298-10 = 12288) | | | | | | | |
| D. C. BALDWIN 21-15 #1 | 3697 | F | 30 | 360 | 109758 | 44121 | 28142 | 961 | 27657 | 1446 | |
| ADAMS 9-16 #1 | 3995 | F | 30 | 301 | 161099 | 40165 | 25235 | 728 | 24810 | 1153 | |
| BD. OF SCH. COMM 16-7 #1 | 2515 | F | -0- | -0- | 552 | 293 | 11 | 464 | 11 | 464 | |
| | | | | * (PROD. - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | |
| | | | | * (TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | |
| [illegible] | | | | 3423 | [illegible] | 425297 | 275170 | 9853 | 270814 | 14159 | |

1222

FORM [illegible] 15
See instructions on reverse side of form
Rev. 12-84

STATE OIL AND GAS BOARD OF ALABAMA
420 Hackberry Lane
P. O. Box O, University Station
Tuscaloosa, Alabama 35486

PRODUCER'S MONTHLY REPORT FROM GAS WELLS
(file in duplicate)

Month [illegible], 19 85

Field HATTER'S POND County MOBILE
Operator GETTY OIL CO./[illegible] Address P. O. BOX 52332 City HOUSTON State TEXAS Zip 77052
Person to contact regarding this report L. L. BOBBITT Phone number 713-659-5794

PRODUCTION

| Pool<br>Well name and number | Permit no. | Well Status | No. days producing | WATER (BBLS)<br>Total water produced | GAS (Mcf)<br>Total gas production F.W.S.V.* | GAS (Mcf)<br>Total sales gas | CONDENSATE (BARRELS)<br>Total condensate produced | CONDENSATE (BARRELS)<br>Total condensate on hand beginning of month | CONDENSATE (BARRELS)<br>Total condensate to transporter | CONDENSATE (BARRELS)<br>Total condensate on hand end of month | Gas condensate ratio (cu. ft. per barrel) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| D. C. BALDWIN 15-6 #1 | 2270 | F | 30 | 328 | 149388 | 59378 | 37420 | 1470 | 36793 | 2097 | |
| | | | | *(PROD. - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | |
| | | | | (37420 - 20 = 37400) | | | | | | | |
| | | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | |
| | | | | (36793 - 20 = 36773) | | | | | | | |
| CREOLA MINERALS 2-6 #1 | 2740 | F | 30 | 453 | 241402 | 95800 | 59684 | 1699 | 58803 | 2580 | |
| G. RADCLIFF 17-7 #1 | 2961 | F | 21 | 18 | 16709 | 7958 | 1208 | 46 | 1188 | 66 | |
| | | | | *(PROD. - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | |
| | | | | (1208 - 10 = 1198) | | | | | | | |
| | | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | |
| | | | | (1188 - 10 = 1178) | | | | | | | |
| WILKIE, G. U. 28 #1 | 2746 | F | 30 | 246 | 73688 | 28137 | 22049 | 1201 | 21636 | 1614 | |
| | | | | *(PROD. - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | |
| | | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | |
| Totals | ☒ | ☒ | ☒ | | | | | | | | ☒ |

1223

FORM ( 15
See instructions on reverse side of form
Rev. 12 84

STATE OIL AND GAS BOARD OF ALABAM

438 Hackberry Lane
P. O. Box O, University Station
Tuscaloosa, Alabama 35486

PRODUCER'S MONTHLY REPORT FROM GAS W S
(file in duplicate)

Month September, 19 [illegible]

Field HATTER'S POND County MOBILE
Operator GETTY OIL CO/[illegible] Address P. O. BOX 52332 City HOUSTON State TEXAS Zip 77052
Person to contact regarding this report L. L. BOBBITT Phone number 713-650-5794

PRODUCTION

| | | | | WATER (BBLS) | GAS (Mcf) | | CONDENSATE (BARRELS) | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Pool<br>Well name and number | Permit no. | Well Status | No. days pro-ducing | Total water produced | Total gas production F.W.S.V.* | Total sales gas | Total condensate produced | Total condensate on hand beginning of month | Total condensate to transporter | Total condensate on hand end of month | Gas condensate ratio (cu. ft. per barrel) |
| PETER KLEIN 3-14 #1 | 1978 | P | -0- | -0- | -0- | 0 | -0- | -0- | -0- | -0- | |
| | | | *(PROD - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | | |
| | | | | | | | | | | | |
| | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | | |
| | | | | | | | | | | | |
| E. L. HATTER 4-10 #2 | 2629 | P | 22 | 22 | 7359 | 3024 | 1620 | 75 | 1546 | 99 | |
| | | | *(PROD. - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | | |
| | | | | | | | | | | | |
| | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | | |
| | | | | | | | | | | | |
| CREOLA MINERALS 10-11 #3 | 2213 | P | 30 | 378 | 182719 | 71826 | 48162 | 1466 | 47535 | 2084 | |
| | | | | | | | | | | | |
| CREOLA MINERALS 34-10 #1 | 2735 | P | 30 | 585 | 36976 | 12291 | 8056 | 246 | 7903 | 399 | |
| | | | *(PROD - COND. USED FOR TREATING = ACTUAL PROD.) | | | | | | | | |
| | | | (8056 - 10 = 8046) | | | | | | | | |
| | | | *(TOTAL SALES - COND. USED FOR TREATING = ACTUAL PIPELINE SALES) | | | | | | | | |
| | | | | (7903 - 10 = 7893) | | | | | | | |
| | | | | | | | | | | | |
| Totals | ☒ | ☒ | ☒ | | | | | | | | ☒ |

**STYLE OF CASE:** CRIMINAL ACTION NO. H85-00012(L)
USA
vs.
WALTER L. NIXON, JR.

DIVISION: Hattiesburg

APPEARANCES:
**FOR PLAINTIFF:**

Reid Weingarten
Jan Litle
Public Integrity Section
Criminal Division
U. S. Department of Justice
P. O. Box 50168, F. St. Station
Washington, D. D. 20004-0168

**FOR DEFENDANT:**

Michael S. Fawer
Herbert V. Lawson
FAWER, BRIAN, HARDY, ZATZKIS
700 Camp St.
New Orleans, LA 70130

| | | | | |
|---|---|---|---|---|
| JURY TRIAL: | 1-20: | 3. | 1-30: | 7. |
| | 1-21: | 6.5 | 1-31: | 7. |
| | 1-22: | 6.5 | 2-3 : | 6. |
| | 1-23: | 7.5 | 2-4 : | 6. |
| | 1-24: | 6.5 | 2-5 : | 6. |
| | 1-25: | 4.5 | 2-6 : | 6.5 |
| | 1-27: | .5 | 2-7: | 6.5 |
| | 1-28: | 7. | 2-8 : | 15. |
| | 1-29: | 6.5 | 2-9 : | 8.5 |
| | TOTAL: | 117 hours | | |

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
Entered
FEB 14 1986
CLERK
BY DEPUTY

PLACE OF HOLDING COURT: Hattiesburg, Miss.
JUDGE PRESIDING : Judge James H. Meredith
COURT REPORTER : Dave Scott

DATES : January 20-25; 27-31, 1986 and
February 3-9, 1986

ACTION TAKEN:

1-20: In limine motions (courtroom deputy not present)
1-21 thru
1-25 Jury selection
1-27 Jury sworn in. 24 hour continuance due to Reid Wartengarten sick with flu.
1-28 Opening remarks
2-4 Govt rested; deft's motion for acquittal-DENIED
2-7 Deft rested. No rebuttal from govt.; deft's motion for acquittal-DENIED
2-8 Closing statements. 3:57 PM - 11:45 PM, jury deliberating
2-9 Alternate jurors excused. Jury deliberated until 7:50 PM. Verdict in court at 7:52 PM. Counts I & II-NOT GUILTY; Counts III & IV-GUILTY. SENTENCING SET 3-31-86 AT 10:00 A.M., IN HATTIESBURG, MISS. Deft. to remain P/R.

Zola Haralson, Courtroom Deputy

# TUESDAY

| JANUARY 1986 | | | | | | |
|---|---|---|---|---|---|---|
| S | M | T | W | T | F | S |
| | | | 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | 29 | 30 | 31 | |

# 4

FEB. 1986

| MARCH 1986 | | | | | | |
|---|---|---|---|---|---|---|
| S | M | T | W | T | F | S |
| | | | | | | 1 |
| 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 23 | 24 | 25 | 26 | 27 | 28 | 29 |
| 30 | 31 | | | | | |

## —APPOINTMENTS—

7:00 A.M.
7:30
8:00
8:30
9:00
9:30
10:00
10:30
11:00
11:30
12:00
12:30 P.M.
1:00
1:30
2:00
2:30
3:00
3:30
4:00
4:30
5:00
5:30
6:00

5:30 Note to Judy
5:40 Judge answered
7:20 Note to Judge
7:30 Judge Answered
7:40 Note to Judge
10:00 Note to Judge
x Jap

2-8-86

Judge Meridith,

Billie Dyell

We would like to hear Defendant's Exhibit #32. Is it permitted?

② 7:20

2-8-83

Billie Dyess

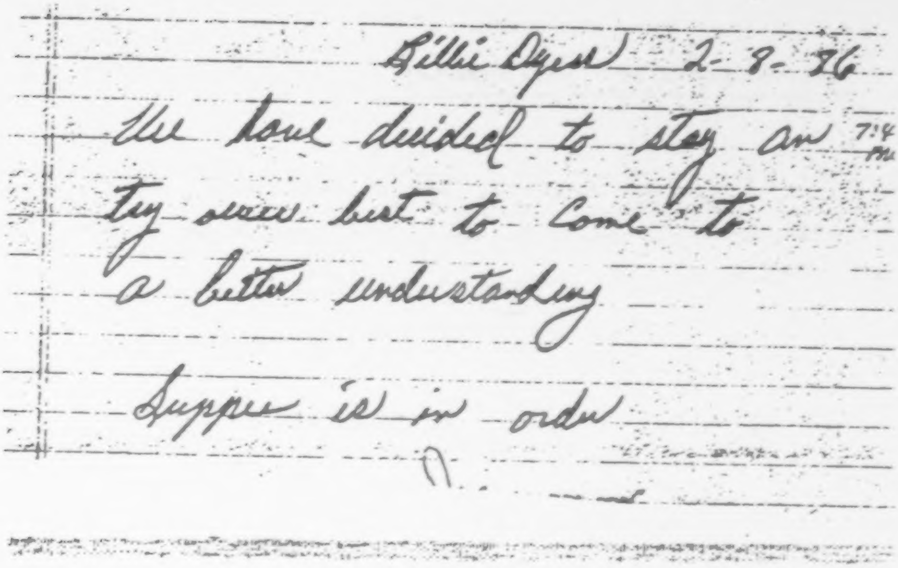
Things look hopeless at this time If there is any suggestion that can be legaly made we would Welcome it.

7:30 PM

Members of the Jury

You may stop and eat and continued deliberating. OR you may Retire for the night and Return Tomorrow at 9:00 AM. Let us know your decision

JHMeredith



Billie Dyer 2-8-76

We have decided to stay an 7:4 pm
try ours best to come to
a better understanding

Supper is in order

2-8-86
10:00PM.

Members of the Jury,

Would you like To retire for the night And return Tomorrow to deliberate or would you like to continue with your deliberations? Please advise

JH meredith

Billie Dyer 2-8-86 10:03

Deliberate longer

11:45 PM

Ladies & Gentlemen of the Jury,
You are excused until 10:00 Am
Tomorrow to continue your deliberations

J H Meredith

2-7-86

The jury started at approximately 9:45 AM.

J Hall
U.S. Marshal

Billie Dyess!
11:35
2-9-86

Mr. Huntley Davis is sick with artheritis an says he has stayed up as long as he can stand it

2-9-86

12:05

Have you reached a Unanimous Verdict on any of the counts? Please Respond but do not give me the count or the Verdict

J H Meredith

2-9-96 12:10

We have not reached a unanimous verdicts on any count.

Billie Dyer

2-9-85

3:45

We have reached a Verdict
Unamousily on one Count

Dead lock on all the other

Billie A. Dyess

2-9-86
3:55

Members of the Jury

So far So good - Keep deliBerating
Until you have completed
all counts

J H Meredith

2-7-86 4:50

We have agreed Unanimously on another Count

F. Billie Dyess

Good - Keep deliBerating

JH Meredith

2 - 9 - 86
5:55

The Jurors have agreed on 'one' more count Unanamously

Billie Dyer

Good— Keep up the good work & finish the last one

J H Meredith

2-9-86

7:45

The jury has voted unanamously
on the last Count

Billie Dyess

EXHIBIT N - 47

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

---

KATIE S. MATISON Plaintiff

v. CIVIL ACTION NO. H86-0155(W)

GLENN L. WHITE, INDIVIDUALLY AND AS THE DISTRICT ATTORNEY FOR THE TWELFTH MISSISSIPPI CIRCUIT COURT DISTRICT, PAUL H. "BUD" HOLMES AND JAMES K. DUKES Defendants

---

Transcript of the testimony of:

PAUL H. "BUD" HOLMES

Taken in the Conference Room of the law firm of Bryant & Stennis, Hattiesburg, Mississippi, on March 4, 1987.

---

A-P-P-E-A-R-A-N-C-E-S

DENNIS L. HORN
Horn & Payne
Post Office Box 1725
Jackson, Mississippi 39205
REPRESENTING KATIE S. MATISON

ROBERT S. HAMMOND, JR.
Bryant & Stennis
Post Office Box 1567
Hattiesburg, Mississippi 39404
REPRESENTING JAMES K. DUKES

MAURICE DANTIN
Dantin & Dantin
301 Citizens Bank Building
Columbia, Mississippi 39429
REPRESENTING PAUL H. "Bud" HOLMES

JON MARK WEATHERS
Weathers & Leggett
Post Office Box 1385
Hattiesburg, Mississippi 39401
REPRESENTING GLENN L. WHITE

ALSO PRESENT:

JAMES K. DUKES

Watkins?"

At this point we were set for trial against Drew. I said, "If he will identify him, I will make the same agreement that the Government has got with him, that I'll be willing to go ahead and pass the case on just like we agreed to.

Q. Were you contemplating probation?

A. Oh, yeah. That's exactly what the Government offered.

Q. Was that what the Government offered?

A. Oh, the Government, that's what's in the written agreement with the Government before we ever got it. And that -- and when I got the case, that's what Drew was laboring under, you know, was that his cooperation then, that he already cooperated. That was his whole gripe, he had cooperated with the Government, he was entitled to probation. That's what Bill kept hollering. I mean, that was his basic complaint.

Q. Now --

A. Okay. One thing further. That whenever Watkins came in and testified, then Drew would be sentenced. Drew would not be sentenced until after Watkins was tried and he testified. That was the agreement.

Q. Now, sometime thereafter an order was entered, I think, remanding the case to the file or something of that nature?

A. Passing to the file.

Q. Passing to the file?

A. Yes.

Q. An order passing a case to the file does what? I used to be an assistant district attorney.

A. Absolutely. Moves off active docket to inactive docket and it stops the 270-day rule fr running.

Q. It does stop the 270-day rule from running?

A. Yeah. And both people got -- as long as the defendant agrees to it, everybody is in agreement, they can go ahead and still demand a trial; but the 270-day rule was abated as long as it was in the active file.

Q. Now, the 270-day rule wouldn't apply to Drew if he's already pled guilty, would it?

A. That would be correct. That would be regarding a plea about it. The only reason that I'm saying -- the reason this passed to the files about a year later was because Bill Porter was screaming, was fussing about it, you know, about that it was up in the air and everything.

I said, "Bill, we will just go ahead and do it."

If you recall, we kept getting continuances in the case. Remember it kept continuing, continuing, continuing? That's what they did, as far as I can see.

Q. What, if any, conversations did you have with Katie Matison about passing that case to the files?

A. None.

Q. Did you do that yourself?

A. Did it.

Q. Now, when did you go out of office as district attorney?

A. January of 1984. December 31 of '83.

Q. Now, after the case was -- what did you say -- retired to the file, is that what you said?

A. Passed.

Q. I'm sorry. Passed to the file. All right. It was reinstated?

A. That's right.

Q. Why was it reinstated?

A. Because we located Watkins.

Q. When did that happen? Do you remember relative --

A. About February of that year, when I reinstated it.

Q. '82?

A. I don't know.

Q. I think that would be 1983.

A. Located Watkins.

Q. And was Watkins ever tried?

A. No.

Q. What happened to him?

A. Jumped bond again.

Q. And to this date has anybody found him?

A. No.

Q. He jumped on a hundred-thousand-dollar bond.

Q. What kind of bond was that?

A. Surety bond. Forfeited it. I think the State collected on the bond.

Q. What, if anything, do you know about a meeting in the summer of 1983 where it was arranged that Wiley Fairchild would make a campaign contribution to Glenn White?

A. Never heard of that.

Q. Never heard of anything?

A. No, never in my life.

EXHIBIT N - 48

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/4/84

Investigation on 4/25/84 at Hattiesburg, Mississippi File # JM 58B-109

by SA DONALD M. LAWLESS/mae Date dictated 4/26/84

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

JN 58B-109

Continuation of interview of PAUL H. HOLMES Page 6

*

HOLMES advised in approximately December of 1982, WATKINS was still in a fugitive status, and therefore, FAIRCHILD had not yet been sentenced pending his testimony against him. HOLMES advised about this time BILL PORTER came to him saying he wanted HOLMES to dismiss the case against FAIRCHILD which HOLMES stated he refused to do. HOLMES further advised PORTER told him he did not trust RICHARD MC KENZIE, the individual who had just been elected as the new circuit judge in Forrest County, and as a result, was going to file a writ of habeas corpus relative to speedy trial for his client, DREW FAIRCHILD. HOLMES advised he was aware if PORTER filed such a writ, he could be compelled to sentence FAIRCHILD. As a result, HOLMES advised he decided to pas the FAIRCHILD case to the file, knowing it could be reopened in three years and would simply place the case in a holding status.

HOLMES advised he had never had any direct or indirect contact with WILEY FAIRCHILD during the entire time he was prosecuti DREW FAIRCHILD. HOLMES repeatedly denied he had had any contact of this nature. HOLMES specifically denied he had personally met with FAIRCHILD, either in his office or FAIRCHILD's office, on the matter of his son, DREW FAIRCHILD. Furthermore, HOLMES denied WILEY FAIRCHILD had ever agitated with him in any way on DREW FAIRCHILD's case. HOLMES specifically denied he had ever gone to the office of WILEY FAIRCHILD to discuss with FAIRCHILD the treatment of any type publicity which FAIRCHILD might wish to make. HOLMES advised he h heard "street talk" that WILEY FAIRCHILD was going to the "TV people during the time when he reinstated DREW FAIRCHILD's case on the court docket.

JN 58B-109

Continuation of interview of PAUL H. HOLMES Page 9

HOLMES advised he has never discussed the DREW FAIRCHILD case with Judge NIXON and/or GEORGE PHILLIPS.

HOLMES advised it was his opinion that no money had ever changed hands, either on the state or federal level, for the purpose of influence or bribery in connection with the handling of the DREW FAIRCHILD case.

EXHIBIT N - 49

YALE LAW SCHOOL
401A YALE STATION
NEW HAVEN, CONNECTICUT 06520

GEOFFREY C. HAZARD, Jr.
*Sterling Professor of Law*

(203) 432-4971

July 22, 1988

David O. Stewart
Miller, Cassidy, Larocca & Lewin
2555 M Street, N.W.
Suite 500
Washington, D.C. 20037

Dear Mr. Stewart:

You have requested my opinion concerning possible violations of the Code of Judicial Conduct by Judge Walter L. Nixon, Jr., of the United States District Court, Southern District of Mississippi, based upon certain facts you have stated to me. Based upon those facts, which I recite in this letter, it is my opinion that no violation of the Code of Judicial Conduct was committed.

## I. Factual Statement

You have stated to me the following facts as a summary this case:

1. In 1979, Judge Nixon discussed with several friends the possibility of investing in oil and gas ventures. With seven children, several of whom were approaching college age, Judge Nixon hoped to develop additional income.

2. Carrol Ingram, a friend of more than 10 years, was an attorney in Hattiesburg who represented Wiley Fairchild, a successful oil investor and Ingram's second cousin. Judge Nixon expressed to Ingram an interest in investing with Wiley Fairchild if an opportunity arose. Ingram mentioned that matter to Wiley Fairchild, who agreed to sell Judge Nixon some mineral interests when he had something the Judge might want to purchase. One of Wiley Fairchild's motives was his desire to become friendly with Judge Nixon, an influential man.

3. Fairchild did not really know Judge Nixon before the transaction was agreed to in late 1979 and early 1980. Under the verbal agreement reached at the time, Judge Nixon was willing to invest around $10,000, which he would borrow from the bank, and Wiley Fairchild was to select the mineral interests to be sold. Wiley Fairchild selected the three mineral interests in early 1980 and informed Ingram of the selection; Ingram told Judge Nixon. Fairchild set the price for the royalty interests at $9,500, a price which he has since testified was a "fair

price" though not necessarily the highest price he could have gotten for the interests.

4. Due to miscommunication, Ingram and Wiley Fairchild each thought the other was going to prepare the documentation for the mineral sale. The deeds then were prepared inaccurately and had to be corrected. The royalty deeds were not executed until approximately a year after the verbal agreement was reached.

5. At that time (February 1981), Judge Nixon was prepared to take out a bank loan to pay for the interests. Ingram told him that Wiley Fairchild would be willing to "carry the paper" on the loan, so Judge Nixon signed notes for the amount. The terms of the unsecured notes from the Fairchild Construction Company were set by Wiley Fairchild at 10% simple interest with a three-year term. The interest rate at that time for unsecured personal loans at commercial banks was about 15%.

6. After another year's delay due to confusion over the royalty division orders, Judge Nixon in 1982 began to receive royalties on the investments, two out of three of which were very successful. Judge Nixon paid off the notes on a timely basis and earned approximately a $50,000 return on his investment. Wiley Fairchild has testified that he did not know at the time he sold the mineral interests to Judge Nixon that the investments would pay off so well, and that oil investments are always a gamble. Judge Nixon told Wiley Fairchild in May 1981, after the agreement had been finalized, that he would help Wiley Fairchild if he could, and that if he could not help Fairchild, he would simply tell him so.

7. Also in 1981, Judge Nixon invested in three other oil and gas ventures through other friends that he had contacted. Each of the other three investments was made for $10,000 or less and was financed through a personal loan with a bank, with interest charged at approximately 15%. As of 1984, none of the other three investments showed a positive return for Judge Nixon.

8. In August 1980, approximately six months after the verbal agreement had been reached concerning Judge Nixon's investment, a planeload of marijuana was seized at the Hattiesburg Airport. As the investigation developed, it turned out that Wiley Fairchild's 48-year-old son, Drew Fairchild, had been involved in the marijuana conspiracy. Drew Fairchild reached a memorandum of understanding with federal authorities several months later, under which he agreed to plead guilty in return for cooperating with federal investigators to pay a $15,000 fine, and to accept a five-year term of probation.

9. In the summer of 1981, Drew Fairchild's lawyer, Bill Porter, complained to his friend, Paul "Bud" Holmes, that Drew Fairchild had not paid Porter's fee for the federal plea bargain. Bud Holmes was then the District Attorney for Forrest and Perry Counties, which include Hattiesburg. In response to

Porter's complaints, Holmes called the United States Attorney for Mississippi and received permission to prosecute Drew Fairchild's case on the state level. Although Drew Fairchild had signed the memorandum of understanding with federal authorities nine months earlier, no federal charges ever had been brought against him.

10. Homes then secured a state grand jury indictment of Drew Fairchild in August 1981. Within several days of the state-court indictment, Wiley Fairchild paid Porter's claim for a fee of $7,500.

11. In January 1982, Drew Fairchild entered a guilty plea to the state charge in return for a recommendatin of a $5,000 fine, five years' probation, and his agreement to testify against the pilot of the marijuana plane, Robert Watkins, who was still a fugitive. For thenext three years, Watkins remained at large, and Drew Fairchild was never sentenced.

12. In December 1982, Drew Fairchild's attorney, Bill Porter, began complaining again to Bud Holmes. Porter pointed out that the local judge was retiring and the new judge might well not accept the state's recommendation for Drew Fairchild's sentence. Holmes thereupon moved the state court for an order to "pass the case to the files". This is a procedural device in Mississippi practice which places the case on an inactive status. As a matter of law, any case that has been passed to the files may be reactivated. As a practical matter, few are. The state-court judged signed the order passing the case to the files on December 23, 1982.

13. When the new state court judge took the bench a week later, he pointed out to a newspaper reporter that Drew Fairchild's case had been passed to the files by his predecessor. The resulting publicity, plus the extradition of the fugitive Watkins from Florida to Mississippi at that time, prompted Holmes to move to have the case returned from the files, and it was. Drew Fairchild's case thus resided in the inactive files for 33 days.

14. Within a couple of months of that event, in March 1983, Judge Nixon was holding court in Hattiesburg, where he periodically convened court. When a jury verdict came in early one day, he called Wiley Fairchild to arrange to visit Fairchild's office. Wiley Fairchild, who is a bit of a recluse, had asked Judge Nixon to keep in touch with him, and Judge Nixon called Wiley Fairchild on occasion to chat, mostly about the investment.

15. When Judge Nixon arrived at Wiley Fairchild's office, there were a few moments of pleasantries with Wiley and his brother, Rodney Fairchild. Wiley Fairchild then told his brother to leave the room and told Judge Nixon, with some heat, that Bud Holmes "and maybe Carroll Ingram" were blackmailing him by dragging the good Fairchild name through the mud in the media. Wiley Fairchild emphasized that he did not want any help for Drew

Fairchild, that Drew had always been a problem, but that Wiley Fairchild did not like having his family name "drug through the mud." Wiley Fairchild also claimed that another conspirator was not being prosecuted and that Drew Fairchild should not be picked upon because his father has money. Wiley Fairchild said that if Holmes would prosecute the other individual, Wiley Fairchild would be satisfied.

16. Wiley Fairchild testified that he spoke to Judge Nixon on this subject only because he had heard that Judge Nixon was a friend of Bud Holmes', and that if Judge Nixon had not been a friend of Bud Holmes', he would not have mentioned the matter to Judge Nixon. Wiley fairchild testified that he hoped Judge Nixon would talk to Homes about the blackmail allegation, but that he did not ask Judge Nixon to do so. Judge Nixon got the impression that Wiley Fairchild wanted him to talk to Holmes, but agreed that no such request was made.

17. Judge Nixon was shocked by Wiley Fairchild's allegations and said nothing in response. He had known Bud Holmes for 20 years, and Carroll Ingram for 10 years, and believed the blackmail allegations were "nonsense," although Wiley Fairchild was apparently sincere in making them. Judge Nixon returned to his chambers and worked for a while. The conversation with Wiley Fairchild probably lasted no more than 20 minutes.

18. Judge Nixon previously had arranged to see Bud Holmes on his way back to Biloxi that night to borrow some Hank Williams, Sr., records. Judge Nixon had known Holmes professionally and personally for many years, and Judge Nixon and his family had visited Holmes' home on several occasions.

19. When Judge Nixon arrived at Holmes' farm, he and Holmes had a couple of drinks and listened to some of the records. Holmes received and placed several phone calls while they were together. Although Judge Nixon had not intended to mention Wiley Fairchild's accusations to Holmes, those accusations were "weighing" on him, as he believed they must be the result of a misunderstanding.

20. Judge Nixon told Holmes that Wiley Fairchild said that Holmes was blackmailing him over Drew Fairchild's case. Holmes replied that Wiley Fairchild is paranoid - "he thinks everyone is after his money" - and that the case had been resolved. Holmes attempted to describe the case further to Judge Nixon, but Judge Nixon said he did not want to hear about the case. Judge Nixon was looking through the records when Holmes called him to the phone and said, "Talk to Wiley Fairchild."

21. When Judge Nixon picked up the receiver, Wiley Fairchild told him that he was glad that Judge Nixon had raised that matter with Bud Holmes, and that Wiley Fairchild was satisfied. Judge Nixon said goodbye and gave the phone back to Bud Holmes, who then spoke to Wiley Fairchild some more. Both

Holmes and Wiley Fairchild recall that Holmes said something to the effect that when Judge Nixon asks him to do something, he is glad to do it. Holmes testified that he was trying to make Judge Nixon "look like a hero" to Wiley Fairchild.

22. Although Wiley Fairchild's recollection of the telephone conversation differs from Judge Nixon's, he has testified that it was a very brief exchange and that he concluded from the telephone conversation that the blackmail attempts would end and that Holmes would live up to the previous plea agreement with Drew Fairchild.

23. For two years after these conversations and the phone call from Bud Holmes' farm, nothing happened in Drew Fairchild's case. In 1985 -- approximately nine months after the federal grand jury began investigating Judge Nixon and his investment with Wiley Fairchild -- the state court judge announced that he would not be bound by the prosecutor's plea recommendation in Drew Fairchild's case. Drew Fairchild then withdrew his guilty plea in state court, and his lawyer arranged for Drew to be indicted by federal authorities instead. Ultimately Drew Fairchild received a federal sentence of six months in prison which also satisfied all state charges against him. The federal proceedings against Drew Fairchild were before a judge from the Eastern District of Louisiana who was specially appointed to hear the case.

24. Throughout the period 1980 to 1985, there is no evidence that Wiley Fairchild or any of his businesses had any lawsuits before the United States District Court for the Southern District of Mississippi. Because Wiley Fairchild was a substantial and active businessman, however, it would not have been impossible for such a case to arise.

25. Judge Nixon reported the Fairchild investment and loan on the federal financial disclosure forms for 1981 and all years thereafter.

## II. Analysis And Opinion

The actions described above, in my opinion, do not present a violation of the Code of Judicial Conduct. I have considered particularly Canon 2(B) and Canon 5(C)(4) and have concluded that neither provision was violated.

### A. Canon 2(B)

Canon 2(B) provides that a judge "should not lend the prestige of his office to advance the private interests of others, nor should he convey or permit others to convey the impression that they are in a special position to influence him". In the circumstances of this case, I believe Judge Nixon's act of relating Wiley Fairchild's blackmail allegation to Bud Holmes would should not be held to constitute lending the prestige of his judicial office to a private interest. The prosecution of

Drew Fairchild was a state court matter to which Judge Nixon had no official connection. Judge Nixon apparently was approached by Wiley Fairchild on a personal basis because he was a long-time friend of Bud Holmes', not because he was a federal judge. Judge Nixon evidently spoke to Holmes on the same basis. What Judge Nixon was "lending" appears to have been his position as a longstanding friend and professional colleague of Bud Holmes and not the prestige of his judicial office. As a state prosecutor, Holmes had no matters pending before Judge Nixon, and normally he would understand the Judge's remark as having been made as a personal friend. Judge Nixon's actions would not allow others to convey the impression that they could influence him in his judicial office, since the events did not involve any of his judicial duties.

My opinion that there was no violation of Canon 2(B) is reinforced by the context of law practice in less urban parts of the country, such as the Southern District of Mississippi. In those areas, social and personal relations between lawyers and judges, and between them and non-lawyer acquaintances tend to be more intimate, relaxed and informal than they are in larger metropolitan areas. In a more urban setting, a judge might simply decline to hear out Wiley Fairchild's initial grievance or to mention it to Bud Holmes, but in a face-to-face community Judge Nixon's handling of the matter seems unremarkable. Accordingly, there is little basis for an impressiont that Wiley Fairchild was in a special position to influence Judge Nixon. For all of these reasons, my opinion is that Judge Nixon did not violate Canon 2(B).

### B. Canon 5(C)(4)

Under Canon 5(C)(4)(c), a judge should not receive a loan from any party "whose interests have come or are likely to come before him." The loan from Fairchild Construction Company to Judge Nixon, in my opinion, does not violate that provision. A judge expressly is permitted to take out loans "from a lending institution in its regular course of business on the same terms generally available to persons who are not judges". Canon 5(C)(4)(b). Judge Nixon took out bank loans for other investments in the same time period and intended to do so for the Fairchild investment. The alternative loan from Fairchild Construction Company, in my judgment, could be regarded as within the range of reasonable and ordinary commercial arrangements for financing such an oil and gas investment, and thus would be acceptable under Canon 5(C)(4)(b). In any event, there is no indication that Wiley Fairchild or Fairchild Construction Company either was before Judge Nixon or "likely" to be before him, so even if the loan were deemed not expressly permitted by Canon 5(C)(4)(b), it still would not violate Canon 5(C)(4)(c).

### C. Canon 5(C)(1)

Canon 5(C) (1) provides that a "judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves". In my opinion, nothing in the factual recitation above would violate this Canon. Judge Nixon's investment had no apparent connection to any judicial duties or matters before him. The limited role of Attorney Carroll Ingram in the investment arrangements did not, in my view, place Judge Nixon in "frequent transactions" with Ingram so as to violate the Canon.

## III. Additional Opinion Based Upon Bud Holmes' Testimony

You have also asked me for my opinion whether the Code of Judicial Conduct would have been violated if the facts above were assumed to reflect Bud Holmes' description of his conversation with Judge Nixon at his farm. In considering this request, I have assumed the same facts that are set forth above, except for the following paragraphs being substituted for Paragraphs 19-21 above.

Alternative Paragraphs 19-21.

19. Bud Holmes has testified that this conversation occurred in May 1982. Holmes stated that Judge Nixon told him he did not want Holmes to do anything improper or against his oath of office, but that Wiley Fairchild had asked the Judge to put in a good word for Drew Fairchild. Holmes understood Judge Nixon to be informing him that a member of the community (Wiley Fairchild) had been asking about the case and did not understand Judge Nixon to be requesting any special favors for Drew Fairchild. Holmes testified that he responded by stating that he had already worked out a plea bargain with Drew. Nixon said he did not want to hear about the case and did not want Holmes to do anything about it. Holmes said he could pass Drew Fairchild's case to the files.

20. According to Holmes, Judge Nixon then telephoned Wiley to report the plea bargain. Holmes claimed that Judge Nixon then thanked Wiley Fairchild for the investment, explaining on the telephone that it was difficult to pay for the education ofhis children. Holmes claimed that he then got on the telephone with Wiley and told Wiley that he was glad to do what Judge Nixon asked him to do and then volunteered that he would pass Drew Fairchild's case to the files.

21. Holmes also claimed that, although Judge Nixon stressed that he was not asking Holmes to do anything, Holmes passed the case to the files seven months later (in December 1982), in part because of his conversation with Judge Nixon. Holmes testified that Judge Nixon never asked him to pass the case to the files, or to do anything, but that Holmes was trying to make Judge Nixon "look like a hero" to Wiley Fairchild.

This alternative version of events does not alter my conclusion concerning the loan to Judge Nixon under Canon 5(C)(4)(c). With respect to the application of Canon 2(B), my opinion remains that no ethical violation is present. When Judge Nixon spoke with Holmes, he spoke about a state court matter with an old friend, and not in a context in which he could be understood to be lending his judicial office to further a private intest. Holmes' suggestion that he could pass the case to the files was neither requested nor invited by Judge Nixon. Moreover, the long delay between the conversation and Holmes' act of passing the case to the files leads me to question whether the c onversation with Judge Nixon properly may be characterized as a cause of Holmes' passing of the case to the files. That long delay, combined with the existence of an immediate cause for the passing of the case to the files (the complaints of Bill Porter in December 1982), leads me to conclude that Judge Nixon's actions did not convey or permit others to convey that they were in a special under Canon 2(B). In addition, the disposition of the Drew Fairchild case in state court would not reflect directly or indirectly upon anyone's ability to influence Judge Nixon in his judicial matters.

Sincerely,

Geoffrey C. Hazard, Jr.
Sterling Professor of Law

GCH/lmo

## CURRICULUM VITAE

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## EDUCATION

Swarthmore College, B.A. 1953 (Phi Beta Kappa)
Columbia University, LL.B. 1954 (Columbia Law Review)
Honorary Degrees:
M.A., Yale University 1971
LL.D., Gonzaga University, 1985
LL.D., University of San Diego, 1985
LL.D., Swarthmore College, 1988

## PROFESSIONAL APPOINTMENTS

Member, Connecticut Bar, California State Bar
Admitted to practice: Oregon, 1954; California, 1960; Conn., 1982
Practiced in Oregon, 1954-57
Deputy Legislative Counsel, State of Oregon, 1956-57
Executive Secretary, Oregon Legislative Interim Committee on Judicial Administration, 1957-58
Executive Director, American Bar Foundation, 1964-70
Director, American Law Institute, 1984-

## ACADEMIC APPOINTMENTS

Professor of Law, Yale University, since 1971; Garver Professor of Law 1976-81; Nathan Baker Professor of Law, 1981-86; Sterling Professor, 1986-

Associate Professor of Law, University of California, Berkeley, 1958-61
Professor of Law, University of California, Berkeley, 1961-64
Visiting Professor, University of Michigan, 1963
Professor of Law, University of Chicago, 1964-71
Visiting Professor, Stanford University, 1974
Associate Dean, Yale School of Organization and Management, 1979-80
Acting Dean, Yale School of Organization and Management, 1980-81
Deputy Dean, Yale School of Organization and Management, 1981-82
Visiting Professor, Universite d'Aix-Marseille, 1982
Visiting Professor, Harvard University, 1983

## TEACHING SUBJECTS

Civil Procedure, Legal Ethics, Federal Jurisdiction

## PROFESSIONAL ACTIVITIES

Member, American Bar Association, Committee on Professional Discipline, 1985-
Reporter, American Bar Association Special Commission on Evaluation of Professional Standards, 1978-83
Reporter, American Law Institute, Restatement of Judgments, Second, 1973-81
Reporter, American Bar Association Special Commission on Standards of Judicial Administration, 1971-77
Consultant, American Bar Association Special Committee on Code of Judicial Conduct, 1970-72
Member, Administrative Conference of United States, 1972-78
Advisory Board, Yale Law and Policy Review
Member: California State Bar, Connecticut Bar Ass'n, American Bar Ass'n, American Law Institute, Ass'n Bar of City of New York, Institute of Judicial Administration, American Judicature Society, National Legal Aid and Defender Ass'n, Fellows of American Bar Foundation

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"Can Lawyers Place Limits on Liability?" 10 Nat'l L.J. 13 (4/11/88).

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"Rule 1: Keep Your Client Well-Informed," 10 Nat'l L.J. 13 (6/6/88)

"Instructions in Ethics Never Really Stops," 10 Nat'l L.J. 13 (7/4/88)

# EXCERPTED WITNESS TESTIMONY

## WALTER L. NIXON, JR.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA

V. CRIMINAL ACTION NO. H85-00012(L)

WALTER L. NIXON, JR.

BEFORE: The Honorable James Meredith
Senior United States District Judge

DATE: February 5, 1986

PLACE: Hattiesburg, Mississippi

VOLUME 14

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THE COURT: Proceed.

MR. FAWER: Call Walter Nixon.

WALTER L. NIXON, JR.,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FAWER:

Q. State your full name, please?

A. Walter L. Nixon, Jr.

Q. When were you born?

A. December 16, 1928.

Q. Where were you born?

A. Biloxi, Mississippi.

Q. And what were the names of your parents?

A. Walter L. Nixon, Sr., sand Hazle K. Nixon.

Q. Walter, Sr., was he, was he raised in the Biloxi area?

A. Our family was. His family was, yes. He was three years old when he came back to Biloxi. I think his parents happened to be in New Orleans when he was born.

Q. Was there a period of his adult life he served in some political elected position in Biloxi?

A. Yes.

Q. What was that?

A. He was a member of the Harrison County Board of Supervisors for sixteen years, from 1923 through 1939.

Q. When did he die?

A. Died in 1960.

Q. Okay. Is your mother still alive?

A. No, she is deceased. She died in 1965.

Q. Did she grow up in that same area?

A. Yes.

Q. Was she basically a housewife her entire life?

A. Yes, until she and dad married -- I understood they married late in life, and she worked in the, assisted her father, my grandfather, who owned and ran, operated one of the first little grocery stands they called it, Harmon's Fruit Market on Howard Avenue in Biloxi.

Q. She died in the mid-60's?

A. 1965.

Q. Where did you go to school?

A. Attended grammar and high school in Biloxi. I went to, attended my first year of college was at Marion Military Institute in Marion, Alabama. I had a principle appointment at the naval academy, decided not to make the Navy a career, I went on, I was going to study chemical engineering, then changed my mind the second year of college, decided to study law. I went to LSU my next year and then attended Tulane law school and graduated from Tulane University with a law degree in 1951.

Q. Do I understand correctly you entered law school with only two years of college training?

A. That's correct.

Q. And then got your degree and had in effect a combined degree?

A. Yes.

Q. It was in 1951 that you got your law degree?

A. That's correct.

Q. What bar associations are you a member of?

A. Harrison County Bar Association, the Mississippi Bar Association, and the Louisiana Bar Association.

Q. Did you begin by taking the bar in Louisiana?

A. I took it in 1951 and was admitted and came back home to Mississippi and took the Mississippi bar exam in 1952 and was admitted to practice here.

Q. Okay. For a short period of time did you work -- were you employed as a lawyer working in someone else's law office?

A. Yes.

Q. And did there come a time in 1953 when you were called to active duty?

A. Yes, I was called to active duty during the Korean Conflict, served with the United States Air Force. I'm now retired reservist of the Air Force.

Q. How long you were on active duty?

A. Two years.

Q. What period of time was that?

A. From February 1953 to February 1955.

Q. Okay. Upon returning did you come back then to the Biloxi area?

A. Yes.

Q. Tell us about your practice after that?

A. I established my practice as a sole practitioner, and I practiced by myself and took in an associate in about 19, I'd say 64 or 5, approximately three years before I came to the federal bench.

Q. So from, when you came back out of the Air Force in 55 through 19 -- what year was it when you went on the bench?

A. Went on the bench in 1968, I became United States District Judge.

Q. For those 13 years I take it you were in private practice, in sole practice?

A. Yes.

Q. What kind of practice was it?

A. It was a general practice of law. I did mostly civil work, and I guess you would say 70 per cent of it was personal injury work representing plaintiffs, injured people.

Q. Okay. Did you at any time while you were in private practice run for elected office?

A. Yes, I did, one time unsuccessfully for supervisor, which was the same post my father had held years before.

Q. You were not elected?

A. That's correct.

Q. Were you in any way active in politics during that period?

A. At times. At various times I became active in some campaigns, never has really a campaign manager for anyone, but I supported some national and state and local candidates at various times.

Q. Okay. When, in the 1940's, at the end of 1940's did you get married?

A. 1949 during the second year of law school.

Q. While you were still in school?

A. That's correct.

Q. What was the name of your wife?

A. Darnell Holt.

Q. Do you have any children?

A. Yes, two children by that marriage.

Q. Okay. When were they born?

A. Karen was born in 1950 and Walter, III, was born in 1954.

Q. Okay. Subsequently were you and Darnell divorced?

A. Yes, in 1974.

Q. Okay. Did there come a time after that when you remarried?

A. Yes, in 1976.

Q. And whom did you marry?

A. I married Barbara Castello.

Q. Barbara Castello Nixon?

A. Yes.

Q. Your wife is seated in the courtroom?

A. Yes.

Q. Second from the right?

A. That's correct.

Q. And you were married in what year?

A. 1976.

Q. Okay. When you met, was that Barbara's first marriage or she already had a family before that?

A. She had a family. Her first husband is now deceased.

Q. Did she have children by her first marriage?

A. Yes, four.

Q. What ages were ~~they~~ when you were married?

A. Chari was 7, Shay was eleven, ten or eleven, and Shelley was 12 and Joe was 13. Four children.

Q. Okay. Where did you live, where did you take up residence when you were married?

A. Initially in Barbara's home in Ocean Springs. Then we purchased a home shortly thereafter -- we still reside there.

Q. In Ocean Springs?

A. In Ocean Springs.

Q. And the children of Barbara's first marriage, did you institute a proceeding in Chancery Court so that their names are now Nixon?

A. Yes, they are. I did.

Q. And did there come a time after you were married you and Barbara had a child yourself?

A. Yes, Courtney.

Q. Courtney was --

A. Courtney Kathleen was born in 1977.

Q. So as I take it then you had, you have five children, four of whom, five children in the sense that, two from a prior marriage, four from Barbara's prior marriage, and Courtney, who is your child?

A. Seven all together.

Q. Seven all together. I guess it's a lucky number?

A. I hope so. It has been for me.

Q. Tell us about your being -- you became a federal judge you said in 1968?

A. That's correct.

Q. First of all, is that an appointed position or an elected?

A. Its appointed by the President of the United States with the concurrence or confirmation of the Senate. It's a lifetime appointment.

Q. You were appointed to that position in what district, what federal district?

A. Southern District of Mississippi.

Q. How old were you when you were appointed?

A. 39 years old.

Q. At the time was there any younger member of the federal judiciary that you know of?

A. My understanding was that at the time I was appointed I was the youngest federal judge in the United States.

Q. The Southern District of Mississippi at the time comprised how many and still does, how many counties of Mississippi?

A. 45 of the 82 counties.

Q. And those would be the 45 southern most counties, the bottom half of the state?

A. Yes, I'd say the northern most counties as you look across the state would be Noxubee, Holmes, Issaquena, Sharkey, Warren, Lauderdale.

Q. Who are the other -- there were other judges in the Southern District at the time you were appointed?

A. Yes, there were two.

Q. Who were they?

A. Judge Harold Cox, who was chief judge, and Judge Dan Russell. The position I was appointed to was a third created position.

Q. Okay. And at that time what is your best recollection as to what your salary was when you were appointed?

A. Best of my recollection it was $42,500 a year.

Q. The last year prior to that, prior to 1968, in your last full year of private practice, do you have any recollection of what your taxable income was?

A. Yes, I very vividly remember that. It was approximately $220,000. A year.

Q. That was your taxable income or pretax income. Did you have some substantial debts at the time as well?

A. Yes, I did.

Q. Obviously I take it you were going to be taking a substantial cut in salary, talking in terms of take home pay, by becoming being a federal judge?

A. From my taxable income of 220,000 to $42,500.

Q. Okay. Tell the jury why, I mean you obviously realized, everybody knew, you knew it was 42 thousand, right?

A. Correct.

Q. Why did you want to become a judge?

A. Because I think it's the ultimate for any lawyer, it's what a, most lawyers aspire to be.

Q. And did you?

A. Yes, I very much did.

Q. Okay. Tell us the cities in which you sit as a federal judge in the Southern District of Mississippi?

A. We have five established divisions which are Biloxi, called the Southern Division; Hattiesburg, which is the Hattiesburg Division; Meridian, which is the Eastern Division; Vicksburg, which is Western Division, and Jackson, which is called the Jackson Division. In addition we're authorized to hold court in and I do sit in the state facilities in Natchez.

Q. Very infrequently, though?

A. Yes. About once a year.

Q. All right. Let's turn to, and again, you became a judge in

1968, and I take it for the most part aside from perhaps a burgeoning calendar, the mechanism, the court set up all stays constant the next dozen years or so, is that correct?

A. That's correct.

Q. What was your, in that period of time as a federal judge, tell us a little bit what your staff is like?

A. Well --

Q. First, where were you headquartered?

A. I was headquartered in Biloxi. Three judges shared cases equally at that time in all five divisions. In other words, each of the three of us had one third of the docket in each division.

Q. Okay. Just before we come to that -- let's stay with that. In 1968, what do you recall that shared case load to be, approximately?

A. Approximately eight hundred civil cases and, I don't know how many criminal cases, not a great number.

Q. What has that grown to now?

A. Over four thousand cases.

Q. Shared by?

A. Three judges until we just got a fourth on board this last year, same number of judges.

Q. Coming back now to your staff, the people with whom you work, who is on your staff? Yourself as the judge, correct?

A. Yes. My secretary.

Q. One secretary? One secretary?

A. One secretary. I was authorized two law clerks until recently. I just opted for one, plus a bailiff, because of extensive travel that we did, I would have one, called a bailiff or court crier, non-lawyer who would travel with me. I in effect had one law clerk. One deputy courtroom clerk assigned to me, such as Zola here is in the courtroom, and a court reporter at that time, such as David, my court reporter was assigned to me at that time.

Q. As a practical matter, virtually with the exception of the secretary, you see in this courtroom the equivalent of what you had as a staff, meaning judge, a courtroom deputy, a law clerk, a court reporter and a secretary at the desk, is that right?

A. Yes.

Q. Plus one other individual?

A. Right.

Q. That's the way it was for this whole period of time?

A. Yes.

Q. That's the staff with which you functioned?

A. Plus a court crier or bailiff.

Q. Okay. In addition, are there, were there at the time what is known as U. S. magistrate?

A. I didn't understand the question.

Q. You have what's called a U. S. magistrate?

A. What about it?

Q. Did you have a magistrate in the Southern District of Mississippi?

A. Yes, we had two full time magistrates.

Q. What is the role of a magistrate?

A. A magistrate performs various roles such as you heard Judge Roper describe here earlier. They handle petty offenses, misdemeanors, they do a great deal of non-dispositive pretrial work in civil cases, they try civil cases with consent of attorneys, and do a lot of other work. They work hard in our district and do a great job.

Q. Let's talk for a moment about what your time, how it's broken down in some general ways. For the most part, what is your time, what do you do? I mean we recognize a judge tries cases. Is that fair to say that only represents a part of the time?

A. That's sort of the tip of the iceburg. We spend most of our time reading briefs, doing research, with the help of our law clerks, dictating opinions, hearing motions, mostly, usually dispositive motions. Holding pretrial conferences, listening to lawyers argue motions pretrial and posttrial, et cetera.

Q. Okay. Do you spend a certain amount of your time in conferences with lawyers who have cases before you?

A. Yes.

Q. Are you required to attend each year a certain number of workshops and seminars?

A. We are not a required to attend workshops and seminars but they are very helpful and we do. The only thing we're required by law to attend is the circuit judicial council.

Q. That runs for approximately a week each year?

A. Approximately four days each year.

Q. As a judge, approximately how much time each year would you take, pure vacation with your family?

A. Two weeks.

Q. In addition to that, is there something, any other hobby you have?

A. My wife can attest to the fact I'm an avid hunter.

Q. More of an obsession that a hobby?

A. I guess you could say that. I grew up hunting with my dad, bird hunting, started going when I was about nine or ten years old.

Q. Would you try to get away as often as possible to do some hunting?

A. I would, and still do, as often as I can.

Q. What kind of hunting do you like to do?

A. Deer hunting, turkey hunting, bird hunting particularly, also I do a little dove hunting, duck hunting. I like to do it all. I can't fit it all in; I do some at various times.

Q. Where do you do most of your hunting?

A. Usually about 35 miles north of Biloxi in the Red Creek

Wildlife Management Area. I hunt in Copiah and Claiborne County around Barlow; some in Warren County, and some in Alabama, Sumter County just east of Meridian.

Q. Let me turn to another subject for a minute. Your financial affairs, for the most part, when it comes to your household finances, who handles that?

A. My wife Barbara.

Q. With respect to any other financial aspects that you might have, your salary, any business accounts you have, keeping track of your tax matters or matters that you need to deal with on your tax returns, credit cards, travel vouchers, who handles that?

A. My secretary.

Q. Between your secretary and your wife is that basically where the financial matters are controlled or handled?

A. Yes.

Q. Do you personally deal with that on a day to day basis?

A. No.

Q. Have you ever really since you were a judge?

A. Except to sign checks at the office, of course.

Q. With respect to the preparation of your tax returns or any financial disclosure statements or financial statements that you need to have prepared, who have you traditionally had do that for you?

A. I have had a good friend who's now deceased. He's a certified public accountant named Charles Logan. Today I have another C.P.A. firm that does that work. I employ them to do all my tax return and financial disclosure statement and what have you.

Q. Please try to keep your voice up. You're trailing off. Can the jury hear it all right?

A. I'm sorry. I'll try to speak up.

Q. In any event, let me just ask you for a moment about the preparation of these returns, disclosure statements. With whom would normally Mr. Logan let's say before he died -- by the way, when did he die, in 1982?

A. Yes.

Q. Prior to his death, when he wanted to get information to get the preparation of the tax return and disclosure statement, who would he work with basically?

A. My secretary.

Q. And would you supply her basically or would she have an ongoing matter, that kind of information?

A. Yes.

Q. Turn just to another subject for a minute. You indicated there was a fair amount of travel in the southern district by the federal judge; is that right?

A. Extensive travel.

Q. About how much of your time would actually be spend in Biloxi?

A. I'd say approximately 45 to 50 percent.

Q. And where would the other 50 percent let's say or more of your time spent?

A. Well, the greater majority of the remaining time in Jackson and I'd say Hattiesburg and Meridian and Vicksburg in that order.

Q. As a practical matter, I take it then when you were away from Biloxi no matter where you go in the district you pass through Hattiesburg; is that basically true?

A. Yes.

Q. Is that a fact that you have to come through Hattiesburg to come back to Biloxi or to go to any one of these cities?

A. In order to travel the interstate Highway 49 the best route, yes, and that's the route I always travel.

Q. One question now with respect to cases that if I'm going to file a case as an attorney or someone else who's an attorney wants to file a case in the southern district of Mississippi, is there anyway of that attorney being able to know in advance which federal judge is going to handle it?

A. No.

Q. Why not?

A. Because it's a random selection or selection that is designed to prevent that.

Q. If a case were assigned to you in which a business associate or someone you were in a business with was a party, what are you required by law to do?

A. If you're aware of it, you must recuse yourself. That is excuse yourself from the case and go to another judge.

Q. Have you done that on occasion?

A. Yes, I have.

Q. Have you done it frequently?

A. Quit frequently.

Q. Did you have occasion in fact to do it with anything involved in this proceeding?

A. Yes, I did it with respect to a civil case that involved some litigation in connection with I think it was the Marion County well. Didn't involve in particular well, but it would have involved the income, affected the income from the entire field and, of course, I immediately recused myself from just a few years ago in Jackson.

Q. When you recuse yourself is there then a reallotment of the case?

A. Yes.

Q. Do you have any right to say to which judge it will go to?

A. No.

Q. It's put back on the wheel absent your name?

A. I think so. I don't know exactly what our procedure was at that time.

Q. But you have no control?

A. Go to another judge. I would not reassign it to anyone of my choice, no.

Q. By the way, I take it without going into great detail, would a criminal case have a similar blind allotment procedure?

A. Yes, even more so. The safeguard there was designed to be even more fool proof than civil files.

Q. For the most part is the whole allotment procedure governed by the clerk's office as opposed to the judges themselves?

A. That's right.

Q. Let's turn to some of the individuals or personalities that are involved in this proceeding. Do you know an individual or how long have you known Bud Holmes?

A. Since the early 1960's.

Q. And you both were in private practice at the time you met?

A. Yes.

Q. And have you developed a friendship over that period of time?

A. Yes.

Q. Have you done some traveling together?

A. Yes.

Q. Have you had lunch and dinner with him?

A. Yes.

Q. Had a drink with him?

A. Yes.

Q. Done some hunting with him once in a while?

A. Very little. Some.

Q. And that friendship began, as I say, before you were a judge. Did it continue after you were a judge?

A. Yes.

Q. Would you on occasion see him in court before you?

A. Yes.

Q. Where would that be?

A. Usually in Hattiesburg.

Q. Sometimes down here on the Coast?

A. Yes.

Q. I say down here.

A. Very seldom.

Q. I'm thinking I'm here on the Coast, but we're not. We're here in Hattiesburg now, right?

A. Right.

Q. We've been here a long time now?

A. Yes, sir.

Q. In any event, would you at times see him at the Biloxi courthouse as well?

A. Very seldom.

Q. Do you have as a judge, you were a lawyer before that, do you have among your friends as a judge are some lawyers friends of yours?

A. Yes, I do.

Q. Are many of your friends lawyers?

A. Yes.

Q. Do I take it you also have friends not lawyers?

A. Yes.

Q. Do some of those lawyers who are friends of yours practice before you?

A. Yes.

Q. Do you know of anything in the rules of judicial ethics or the coad of judicial ethics that suggests who is a lawyer who is a friend of yours cannot practice before you?

A. No.

Q. Do you give that person any better deal than anybody else?

A. Absolutely not.

Q. When you're in Hattiesburg, when you're here holding court, where do you live usually?

A. Usually motel unless I commute. Many times I would to be with my family at night but it gets very tiring.

Q. Do you sometimes does Barbara sometimes travel with you and stay with you?

A. Yes, whenever she can.

Q. Have you ever been at Bud Holmes's farm?

A. Yes.

Q. About how many times in all?

A. I don't know. Not a great number, but I'd say maybe 6 times, 8 times.

Q. Has Barbara stayed with you when you're out there?

A. Yes.

Q. During the period 1980 through 1984 we all know that Bud Holmes was district attorney in Forrest County, correct?

A. Yes.

Q. Did you see in him any more or any less during that period of time?

A. Less because he was not practicing law. He was full time direct attorney and they prohibit them from practicing.

Q. Would you have occasion to speak to him on the phone, you know, during the period while he was D. A. or during the course of your friendship, would you speak to him on the phone as well as see him once in a while?

A. Yes.

Q. By the way, in terms of Bud Holmes, we've heard some other witnesses testify about it, does he have any idiosyncrasy when it comes to using the phone?

A. He certainly does. I think Glen White pretty well described.

Q. Tell in your words describe it.

A. I think he has what I call telephoneitis.

Q. What do you mean by that?

A. He can't resist a telephone.

Q. When you over the years whether he's D. A. or private practice if you're visiting with him in his office at his home, would it be common or not for him to the pick up the phone and call someone else in the middle of the conversation?

A. If he didn't, he wouldn't be Bud Holmes.

Q. Let's turn for a moment let's leave Bud for a second and turn to another individual and let me just use the year 1979 as the point of reference, okay. Let's talk about Wiley Fairchild. At the beginning of 1979, had you heard the name or had you met Wiley Fairchild first?

A. I don't think I had. If I had, I didn't recall it. It may have been only in passing and I don't believe I did.

Q. Had you heard his name?

A. Yes.

Q. What had you heard about him?

A. I heard that he was in the construction business in

Hattiesburg. I think this company was in the bridge and highway construction business.

Q. Did you know anything about his involvement in the oil and gas business?

A. Not before 1979.

Q. That's basically do you know anything more about it or is that it?

A. That was more or less it at that time.

Q. How about same point as point of reference, how about Caroll Ingram? Did you know Caroll Ingram?

A. Yes.

Q. How long have you known him and what was the relationship?

A. I'd known Caroll a long time.

Q. How did you know him?

A. He was practicing law.

Q. Was he practicing law before you? Did you know him before you were on the bench? Tell us about it.

A. I didn't know him before I was on the bench. Practiced la in court.

Q. What was your relationship?

A. Frequently we would visit. When we were in town, my wife and I, Barbara, visited with him in his home with him and Anne his wife. Eat lunch with them at their house. Annual vegetable lunch that they'd have friends of theirs. I love flesh vegetables and do that socialize some with Caroll.

Q. I take it his house was in Hattiesburg; is that right?

A. Yes.

Q. Has he been to your home down on the Coast?

A. I think Caroll has. I think he and Annel has been there Christmastime if I'm not mistaken him.

Q. Where else could you see him? I sorry. I interrupted you.

A. I'd see Caroll in court and he'd visit over here at times when we were in Hattiesburg holding court.

Q. What other cities?

A. I saw Caroll in Jackson at times.

Q. Why?

A. He was in the legislature. He was in the state senate and when I was holding court up there we'd have dinner together and talk sometimes.

Q. Had Caroll to your knowledge did he hold some position in the state legislature in 1979?

A. Yes.

Q. What kind of position?

A. He was chairman of the senate judiciary committee and held other positions that I'm not aware of. He was a well thought of state senator.

Q. Was there any reason or is there any particular interest why you had occasion to discuss legislation of the state nature with him?

A. Yes. Usually conservation legislation.

Q. Is included in that the wildlife?

A. Yes.

Q. The gaming laws and things of that sort?

A. That's what I'm talking about primarily.

Q. You say you would see him in Jackson when you'd sit up there?

A. Yes.

Q. By the way, in each of the cities that you sit in, when you're in those cities as you travel around or sit, hold court, are their people both lawyers and nonlawyers when they know you're in town call you to get together and you call them?

A. Yes.

Q. Many times you travel to these cities and you're not with your wife aside from your staff, you're alone?

A. That's correct.

Q. In 1979 let's sort of stop the clock for a minute. You had been on the bench 11 years, right?

A. Yes.

Q. You at the time had 2 adult children by your prior marriage, correct?

A. Correct.

Q. You now had 5 children, 4 in Barbara's prior marriage Courtney from your own marriage, right?

A. That's correct.

Q. Those 5 children were what ages then?

A. In 1979?

Q. Yes, sir.

A. Courtney was two years old. Chari was 7, and the other 3 Shay and Shelley and Joe were 11, 12 and 13. No, I'm sorry, 13, 14 and 15.

Q. That's in 1979?

A. Yes.

Q. They're all moving except for Courtney basically moving into the teenage, either move or in the teenage years?

A. Yes.

Q. In 1979 what was your salary?

A. Best of my recollection it was about $54,000 a year. We got a few cost of living raises and maybe another raise or two.

Q. Did you have some debts at that point in time?

A. Yes.

Q. And did you have any outside source of income?

A. Very limited. I had some stock dividend. Stock I had inherited from my mother a little bank stock and some stock in a wholesale drug company that we had organized 5 of us sometime back in the 1950's.

Q. So between the little bit of stock dividend and your salary, that was the source of your income?

A. That's correct.

Q. During that period or about that period of time, were you looking for some outside investments to supplement your income?

A. Yes, I was.

Q. Tell the jury had you -- I mean from your own perspective had you neglected your personal finances up to that point in time?

A. I had and really have through out my tenure as a United States District Judge.

Q. When you were working as you work as a judge, approximately how many hours a week do you devote to your job on an average?

A. I would say on an average 50 to 60 hours.

Q. That's both at the office and at home?

A. Yes.

Q. At that time did you know of any other federal judges, federal judges, who had outside incomes?

A. Yes.

Q. Did you know of such judges who were judges your compatriots in the Southern District of Mississippi?

A. Yes.

Q. What was the source of that outside income?

A. Real estate investments and oil and gas investment.

Q. Is there anything so far as you know of, Judge Nixon, in the code of judicial ethics that prevents a federal judge from investing his money?

A. No, as long as it's in a legitimate business and, of course, in a business where you don't have any conflict of interest.

Q. When I say the code of judicial ethics, is that a written book of guidelines for federal judges?

A. Yes.

Q. Do you know anything that prohibits a federal judge from financing such an investment?

A. No, we're citizens just like everyone else.

Q. What is there -- if you make an investment, what is the, and aside from you indicated that you obviously can't have any conflict of interest, but with that exception, what's your only requirement if you make such an investment?

A. That you disclose this on your financial disclosure statement. And as of the mid 70's, congress enacted a law and the president signed into law requiring federal judges among other certain federal office holders to file each year a federal financial disclosure statement which lists all other investments, sources of income and such matters as that. We file the original in Washington, DC, we file a copy with the clerk of our court in Jackson. It's posted as a public record open for inspection to the public and I might say our news people pick it up every year and report it in the newspaper report the various assets and liabilities of the judges and their comparable worth. They rank us in worth.

Q. Financial worth?

A. Financial worth, yes.

Q. During this period of time we're in the early 1979, you've told us that you were in need or wanting to make some supplement your income in some way, did you discuss that subject with certain people who are friends, are associates of yours?

A. Yes, I did.

Q. Tell me the names of some of the people you discussed it with.

A. Caroll Ingram, Bill Pittman who was president of the First Mississippi National Bank branch on the Coast, Robert Stockett, a business friend of mine in Jackson. James Biglane in Natchez, Lee Gutierrez, Jr., long time personal friend of mine wh was in the seafood packing business in Biloxi and various other people. I suddenly came to the realization in 1979 how badly I had neglected my financial condition and suddenly realized that I had children who would soon be in college and I found it necessary to try to find investments which would supplement my income. We had also one additional expense with respect to one of our children which was personal in nature.

Q. So we can't get too deeply involved as to one of the children, some medical problem that cost some additional money as well?

A. Yes.

Q. With respect to these people you spoke to, let's put Caroll Ingram aside because I'm going to come back to him, did you as a result of speaking to Stockett and to Pittman actually make some investments during this same period of time?

A. Yes, I did.

Q. We'll come back to that. Let's turn then to Caroll Ingram, okay. When, judge, do you first recall ever discussing that subject of wanting to make investments, supplement your income with Caroll Ingram?

A. First part of 1979. Very first part. Early 79.

Q. As best you can recall, by the way, I take it the things I am asking you and you are testifying about, you have spent some time thinking about before you got on the stand?

A. A great deal of time. I've spent a great deal of time trying to reconstruct many things and had to relate them to various events, happenings, and sometimes I can relay a date and sometimes an approximate date and sometimes generally.

Q. Let me ask you. You say it was very early 79. Where do you recall were you and Caroll when you talked about it?

A. In Jackson.

Q. You were up there. Would you have been up there in court?

A. Yes, I was.

Q. And by the way, what part of the year does the legislature meet?

A. I don't know whether it was for 90 days or 120 days at that particular time, but they'd go into session after the first of the year.

Q. The early few months of the year that the legislature meets?

A. Correct.

Q. And do you recall where you were, what were the circumstances or what do you remember about it?

A. I know we had dinner together one evening. I don't remember about the rest of it. It may have been the Red Lobster. I know at one time there we've eaten together sevearl times.

Q. Wherever you were, tell us what you said to him and he said to you.

A. Well, we were talking about our children, our families and I told Caroll that I was interested in trying to invest in something to supplement my income. I knew Caroll was not only a good lawyer but he was a successful businessman. I knew he was successful and I think he owned either an interest in or stock in a savings and loan association here in Hattiesburg and I thought various other businesses. And I was talking to Caroll and asked him if he had other friends, acquaintances at that time if he knew of a good investment that he was either going to get into himself or if there was room for someone else or if he wasn't going to get into it if he'd recommend it, I'd like to think about it and possibly have the opportunity and I told many of my friends like --

Q. Stay with the Caroll Ingram conversation.

A. All right.

Q. In that consideration, did the name of any other federal judge that you knew of who supplemented his income come up?

A. Yes.

Q. Whose name came up?

A. Judge Dan Russell.

Q. What did you tell Carroll?

A. I told Carroll that I knew that Dan, I said Dan, Judge Russell, had very good income from some real estate investments, but principally from oil and gas investments he had made with a particular friend of his, who I knew quite well also.

Q. What was the name of the friend?

A. D. A. Biglane, independent oil man in Natchez.

Q. Okay. What do you recall, if anything, Carroll saying in that context or responding to what you were saying?

A. Carroll was talking generally about difference things, he told me perhaps the -- he was talking about various banking matters that he was contemplating, banking investments, and he also told me, mentioned, mentioned the name Wiley Fairchild.

Q. In what context?

A. Just general. Carroll didn't really get specific at that particular time, but he did say that he had a client named Wiley Fairchild who was in the oil and gas business.

Q. Okay. Was there any further discussion about Wiley Pairchild at that time?

A. No.

Q. Did you, when he mentioned it, did you recall that that was someone whose name you knew, having at least heard of a person like that in the construction business?

A. Yes.

Q. After that meeting, did you do anything or have occasion to talk to anyone, to check out the name Wiley Fairchild?

A. Yes, I did.

Q. Tell the jury what you did.

A. I checked with a couple of people. I think Bud Holmes was one of them, because I knew him quite well, he lived in Hattiesburg. I asked what they knew about Wiley Fairchild. More particularly, his success in the oil and gas business and generally.

Q. And what were you told?

A. I was told that he was very successful in the business, and told that he was a businessman who made many charitable contributions, he was interested in politics and made contributions to quite a few candidates, that he had a good reputation as a person and as a businessman, and that his reputation as an oil and gas man was very good, his success rate was very good.

Q. Did you ask people besides Bud, Bud, others, what they thought of the idea of your investing with Wiley Fairchild?

A. Yes, I did.

Q. And what if any response did you get?

A. Said they didn't know a better man you could invest with as far as that particular industry was concerned, that is from a possible success standpoint.

Q. Okay. Based upon what you learned, did you speak to Carroll, call him, see see him, what did you do?

A. I called Carroll I think. I know I either saw him again or called him not long after, few weeks after I first talked to him.

Q. When is this period of time, when are we talking about?

A. I'd say spring of 1979. Perhaps early spring.

Q. Okay. Tell us what you said to him, what he said to you?

A. I reminded Carroll of our conversation, that he had mentioned Wiley Fairchild's name in passing when we were talking about the investments. And I asked Carroll, since I knew Mr. Fairchild was a client of his, if he would have the opportunity to mention to Mr. Fairchild that I would like to invest with him if possible, especially if Carroll knew of something good, and whether he would, if he had the opportunity, find out if there was a possibility.

Q. What was Carroll's response?

A. Carroll said he would be happy to do that, would get back in touch with me.

Q. Did you mention to him how much or what the parameters were in what you were interested in investing?

A. Yes, I told Carroll I thought I could arrange to borrow about ten thousand dollars.

Q. Okay. Did that basically, I mean I assume you had other chitchat on the conversation, on that subject, basically what you recall?

A. Yes.

Q. Okay. Did you hear back from him immediately?

A. No.

Q. Did a period of time go by?

A. Yes.

Q. Did you call him on several occasions about it?

A. Yes.

Q. Okay. Why did you call him?

A. I called him because he said he was going to talk, see what - talk to Mr. Fairchild at his earliest opportunity and get back with me and I hadn't heard from him.

Q. Did you have any reason -- let me put it another way. Were you interested in finding out from him whether you could invest with Wiley Fairchild?

A. Yes.

Q. How many times do you think you called him?

A. I couldn't count them. Wasn't a great number of times, I'd say possibly a couple of times.

Q. Did there come a time when he called you?

A. Yes.

Q. And approximately when was it?

A. I think it was about the summer of that year.

Q. Summer of 79?

A. A few months after I had talked to him, the second time.

Q. Tell us what he said to you?

A. He told me that he had had the opportunity to talk to Mr. Fairchild and that Mr. Fairchild would be delighted to try to put me into something that could possibly supplement my income.

Q. Was anything else said at that time?

A. Yes, he told me at that time that Mr. Fairchild had mentioned something about mineral interests generally, he was going to put me in, would be delighted to look into it.

Q. Did he give you any information further than that time, or was he just telling you he had mentioned it to Wiley Fairchild and that he would be back to you?

A. He just mentioned he would be back with me.

Q. Okay. Did you hear from him shortly thereafter, or did a period of time go by?

A. Period of time went by.

Q. Did you call him?

A. I talked to Carroll another couple of occasions, yes.

Q. Did you perhaps see him as well?

A. Yes, usually be when I would see Carroll. I called him once or twice too, I believe.

Q. Did there come a time when he contacted you, either in person or by telephone?

A. Yes.

Q. And when do you think that was? Best recollection?

A. Best recollection was about the -- late 79 or early 1980. Probably late 1979.

Q. Okay. And tell us what you recall Carroll saying to you when he called you?

A. When he called me he told me that he had had an opportunity to sit down and talk to Mr. Fairchild, and that Mr. Fairchild had decided that he would put me into, put me into three different wells or mineral interests, and he named the counties, Covington and Marion County, Mississippi, and Mobile County, Alabama.

Q. Okay.

A. And I asked Carroll what the total cost would be to me, he told me ninety-five hundred dollars.

Q. Did you --

A. I asked him what he thought about the investments. He didn't know much about them, but he had a lot of faith in Mr. Fairchild's acumen, or ability in that field, oil and gas business, he thought it was, he reminded me, however, very definitely it was a risk. I told him I was well aware of that.

Q. Okay. Was there any discussion as to when you needed to come up with the ninety-five hundred dollars?

A. Incidentally, I told him I was certainly willing to take that risk at that time.

Q. Okay.

A. I asked Carroll, I asked him when we could conclude the matter, and told him please give me some advance notice so I could arrange my financing, borrow the money in other words.

Q. What was his response?

A. He said he would do that, get back with me.

Q. All right. This you believe, the best of your recollection is in the late part, very end of 1979?

A. I think so. Either that or the very first part of 1980, very early 1980.

Q. Let me ask you this. In this courtroom, well, let me withdraw that. Did there come a time when, well, first, did you hear right back from Carroll Ingram?

A. No.

Q. Did you call him?

A. I think I did call Carroll.

Q. Okay. What if anything did he say to you?

A. He told me, I asked him when we were going to conclude the matter, and the last time I had talked to him about it, that period of time, he told me, he said as soon as he heard something from Mr. Fairchild, he said he's the kind -- he's the kind you don't rush in those type matters, he'll take his own sweet time was the words he used. I told him fine.

Q. Did there come a time when you met Wiley Fairchild?

A. Yes.

Q. You've heard in this courtroom that Wiley Fairchild said that the first time you met him was not until sometime in 1982, do you recall that testimony?

A. Yes.

Q. I recall Carroll Ingram saying he thought the first time he brought the two of you together was sometime shortly after the execution of the instruments in 1981, do you recall that?

A. Yes, I do.

Q. What's your best recollection of when you first met Wiley Fairchild?

A. Early part of 1980.

Q. All right. Tell the jury the circumstances, first, how did you learn, how did the meeting come about?

A. Carroll got in touch with me, told me that Mr. Fairchild would like to meet me, like to meet me face to face and talk to me, because he liked to know someone he was putting into an oil and gas deal.

Q. Okay.

A. Or any deal. He liked to deal with someone personally one on one.

Q. Okay. What did you say?

A. I told him I'd be happy to, and we made arrangements. I don't remember whether I made arrangements to stop through here on my way back to or from court somewhere else or whether I was holding court in Hattiesburg at a certain time.

Q. In any event, did you meet Wiley Fairchild?

A. Yes, I did.

Q. And at the meeting was Carroll Ingram present?

A. Yes.

Q. Did he bring you to the meeting? Did you meet him? What happened?

A. I don't remember whether we met Carroll or I met Carroll there. I either went with Carroll or he had told me how to get there, and I knew where Fairchild Construction's office building was on a Highway 49 just north of Hattiesburg here, you pass -- I passed it many times going back and forth to other places. Told me to park on the north side, I think I must have gone and parked, he told me to park on the north side of the building and come up some stairs, there was a door to the left which was Mr. Fairchild's private office entrance, door to the right that went into his regular business office. Come in the private interest, knock on the door.

Q. And did you?

A. Yes.

Q. And who was there?

A. Carroll.

Q. All right. Who else?

A. At that time no one else.

Q. Okay. Did you meet Wiley?

A. Yes.

Q. Where?

A. At the office.

Q. Okay. Tell us about the meeting, what did you do?

A. That was a very small office. We were introduced, shook hands, sat down and talked to him, we exchanged pleasantries, a little bit on our backgrounds, talked generally. He told me that, reaffirmed the fact that, or confirmed the fact he had told Carroll he was putting me in these three wells.

Q. Had he indicated at all that he knew who you were or had he heard about you?

A. Yes, he told me he had heard quite a bit about me, always wanted to meet me. He inquired then as to why I wanted to invest. And I told him about wanting to supplement my income so I could educate my children and take care of them, I love my children, and certainly wanted to provide an education for them.

Q. What was his response?

A. He thought that was very commendable, impressed, told me it made him feel even better. He said Carroll had mentioned briefly something about that to him.

Q. Did he mention at all, was there any discussion about the particular properties in question?

A. He mentioned briefly the three counties, that's all.

Q. Did he make any comments about their potential?

A. Yes, he did. He thought they were good wells, but now I want you to realize, judge, this is a risky business, and he said most are not producers, and I said I was aware of that fact but I was willing to take the risk.

Q. Is that basically the substance or what the discussion was at that meeting?

A. Yes.

Q. Basically then exchanged some pleasantries and depart?

A. Correct.

Q. Okay. Did he make any request of you before you left, was there any request made of you at this first meeting?

A. Yes, before I left he said judge, I put other people in oil and gas transactions, and he named some of them. I think one was Governor Waller, I think Mayor Chain of Hattiesburg, various other people. He said they keep in touch with me from time to time. He said I wish you'd call me whenever you get a chance to, just to talk from time to time, and either when you're holding court here come by and see me or stop by on your way through Hattiesburg and visit with me whenever you can.

Q. Was there any discussion at this time, at this meeting, of the particular wells in question?

A. Other than the, to tell me briefly what counties they were in, just as Carroll had. Nothing else.

Q. Beyond that?

A. No.

Q. Was there any discussion of the acreage?

A. No.

Q. Was there any discussion of the value of the wells?

A. No.

Q. At that time in 19, I guess early 1980, had you ever heard of the name Drew Fairchild.

A. No.

Q. Did you have any idea that Wiley Fairchild had a son named Drew Fairchild?

A. No.

Q. Had you read anything about Drew Fairchild?

A. Absolutely not.

Q. Did Wiley mention Drew Fairchild?

A. No.

Q. Okay. You basically leave at that time?

A. Yes.

Q. Thereafter did you hear back from Carroll or from Wiley Fairchild or did a period of time pass?

A. I might have talked to Wiley on the phone once or twice. I don't believe I did though during that period of time, perhaps I did.

Q. Did you talk to Carroll?

A. I talked to Carroll several times, yes.

Q. What about?

A. I wanted to know when the paperwork was forthcoming, because I hadn't heard from him in a good while. We had never really formalized the agreement that we had made.

Q. I didn't, maybe I didn't ask you this. What is the date, the best date you can put on when you think you had this meeting or you had the meeting with Wiley, the introduction to Wiley?

A. I would say somewhere in the neighborhood, February or March, somewhere.

Q. Of what year?

A. 1980.

Q. Did there ultimately come a time -- I take it, over the rest of that year did you speak to Carroll a couple of times you said?

A. Yes.

Q. Does there ultimately come a time when you hear from Carroll about this subject?

A. Yes.

Q. When is that?

A. It was either late February or early March, I think early March of 1981.

Q. Okay.

A. Carroll called me, I was in my chambers in the federal building in Biloxi and he phoned me.

Q. What did he tell you?

A. He told me that he had gotten the conveyances from Wiley Fairchild and that he was going to deliver them to me, coming down to Biloxi for another reason, conveyances in those three particular fields or wells t! t he had mentioned. Asked him, Carroll, you were supposed to give me advance notice so I could arrange for my financing. He said don't worry about that, Mr. Fairchild is going to carry the paper himself and let you sign notes and charge you interest as a bank would.

Q. Was that satisfactory?

A. Reasonable rate of interest.

Q. Was that satisfactory to you?

A. Certainly it was.

Q. What else was said?

A. Well, at that time—I think that was it except he said, total consideration was ninety-five hundred dollars.

Q. Is that it?

A. Three notes. Yes.

Q. Did he come, when did you see him?

A. He came down just a few days later. Maybe even the next day, I don't recall. Very shortly thereafter.

Q. You say that Carroll came down, we're calling him Carroll. you've known him as Carroll, right?

A. Yes.

Q. In any event, you think he came down, that would have been early March of 1981, is that correct?

A. Yes.

Q. I take it by that time almost a year had passed from when you were introduced to Wiley Fairchild?

A. That's correct.

Q. In your mind --

A. A little over a year, I think. Approximately a year, gave or take a little.

Q. By the time you got this call, were you in any way doubting the transaction was really going to come about?

A. I had some doubt, grave doubts since such a long period of time had passed.

Q. Did it strike you unusual that that long a period had passed?

A. Yes.

Q. In any event, when Carroll, did Carroll come down a few days later?

A. Yes, either the next day or few days later.

Q. Where did he meet you?

A. In my chambers in Biloxi, my office.

Q. Tell us what occurred?

A. He brought the three written conveyances, conveying these royalty interests in these three particular wells and three promissory notes for me to sign.

Q. Okay. What was said and what was done?

A. Well, he delivered the conveyances, the original and a copy of each to me, and had me sign the three original notes, gave me a -- left a copy of them with me.

Q. Okay. Let me show you the documents. Let me show you

Government's Exhibit 12, 13, and 14, and see if these are the deeds. Let me show you Defendant's Exhibit 19, and see, forgetting the checks for a minute, they are attached to it, see if Defendant's Exhibit 19 are the three original notes that you got?

A. Yes, they were.

Q. I take it the notes obviously now have some checks attached to them, they are marked paid, things of that sort. They were, that didn't appear on them when you first signed them, is that right?

A. Correct.

Q. Forget the checks for the time being.

A. All right.

Q. What is the date that's on those assignments or those deeds and what is the date that's on the deeds?

A. February 25, 1980.

MR. FAWER:

Q. He said to you that this was occurring, he had given you them for signature in early March you believe of 81?

A. That's correct.

Q. Was there any discussion between you about that?

A. Yes, I mentioned to Caroll that I mentioned the date to him.

Q. What did he say?

A. And he said that they were dated back by to conform with the time that the agreement had been reached and which was not unusual and I understood common in this particular industry especially.

Q. Had the agreement as far as your recollection at that time had the agreement did it actually happen on February 25th, 1980?

A. I can't say the exact date but approximately that time.

Q. Did you have any qualms about executing a deed which was executing a note which was backdated?

A. No.

Q. Were you obligating yourself to additional interest in doing so?

A. Yes, but that's when we had the oral agreement and so I thought that was fair.

Q. Was there anything I mean did you hesitate or was it once Caroll told you what this reason was, you signed it without an thought?

A. I signed it.

Q. What occurred after you signed it --

A. The 3 notes.

Q. The 3 notes. Did he leave copies of the notes with you?

A. Yes, he did.

Q. Did he leave copies of the assignments with you?

A. Yes, and I asked him if he would record the 3 assignments for me in the land deed records for me in the counties. In other words, file them for record.

Q. Why did you want them recorded filed?

A. I wanted them recorded to protect my interest against any possible third party claims. That was the usual procedure when you had a deed or assignment anything to do with real estate.

Q. Did he agree to do it?

A. Yes, he did.

Q. When you have a document recorded, is that open? Is that a sealed secret document or is that something that's open available to anyone in the world who wants to look?

A. It's a public record and the chancery clerk's office of each county and they list, they have a land deed record. They list names of the sellers and the buyers and index and also they photostat the actual instrument itself and keep a photostat in a land deed record book and those books and records are open to the public and used every day by various lawyers and title companies and other people checking titles and what have you on a daily basis.

Q. And I take it the deeds that you talked about that were recorded have right at the top your name on each of them Walter L. Nixon, Jr.?

A. Yes.

Q. And by the way, I take it 2 of these counties are counties in the Southern District of Mississippi; is that right?

A. Yes.

Q. Marion and Covington?

A. Yes.

Q. The third is in Alabama. Did that basically end your discussions with Carroll Ingram on that occasion?

A. Yes.

Q. On that occasion or with respect to those documents, did you have anything to do with setting the price on each of the wells?

A. No.

Q. Did you have anything to do -- did you negotiate or discuss with anyone the amount of acreage being assigned to you?

A. No, I didn't. I trusted Carroll. Carroll and I were good friends and I trusted him his integrity, I trusted his judgment and I heard Mr. Fairchild's reputation as a good reputable businessman and I had no reason to. I've dealt with people on trust for a long time. I want people to trust me and I trust them.

Q. Did you have anything to do with selecting of the wells?

A. No.

Q. At that point in time this is now March of 81, had you heard the name Drew Fairchild? Did it mean anything to you at that point in time?

A. No.

Q. Had you ever heard of the name Drew Fairchild?

A. No, I had not.

Q. Did you even know that Wiley Fairchild at that time had a son by that name?

A. No.

Q. Did you know anything at all about a drug bust that had occurred at the Hattiesburg Airport back in August of 1980?

A. No, I didn't.

Q. Do you read the Hattiesburg papers on any type or regular basis?

A. Oh, no.

Q. Did Carroll Ingram have those documents, excuse me, those deeds recorded?

A. Yes, he did.

Q. Do you recall approximately when that was done?

A. I think I got them back in -- I think they were recorded in the first part of April and I received them not long after that. At least 2 of them. I think there was some problem recording Mobile County, but I got it in due course also.

Q. In the spring when is it -- let me withdraw that. In your tax return, I take it you would file for the year 1980 on or before April 15th of 1981?

A. Income tax return?

Q. Yes.

A. Yes.

Q. When was this financial disclosure form due to be filed?

A. We were required to file the financial disclosure form by May 15 of each year disclosing all of the information required for the previous year just as you file a tax return on April 15 of each year for the previous year, prior year.

Q. So for the year 1980, if you wanted to reflect this transaction on the 1980 disclosure statement, did you still have time in which to do so before it needed to be filed?

A. Yes. As I recall, I filed the financial disclosure statement for 19 -- calendar year 1980 in very shortly before the deadline of May 15, 1981 and the instruments had actually been executed, signed the first part of March of 1981 and sent for filing for record in April of 1981.

Q. Let me show you what's been marked as the Defendant's Exhibit 38, the financial disclosure report filed by you for the year 1980. Is this it?

A. Yes, and it was dated May the 8th, 1981.

Q. And is some two months after you have signed the notes and engaged in the transaction, right?

A. Yes.

Q. Had the deeds recorded?

A. That's correct.

Q. Did you include on the 80 disclosure statement anything about this transaction?

A. No.

Q. Why not?

A. Because it was not formalized. Didn't become legally binding until 1981.

Q. And this disclosure statement is for 1980?

A. Yes.

Q. Who prepared this statement?

A. My C.P.A. in conjunction with my secretary.

Q. C.P.A. being Charles Logan?

A. Charles Logan who's now deceased.

Q. In any event, at or about this same period of time, did you engage in any other investments? You've mentioned before that there were some other people you had been talking to in the year 1981. Did you make any other investments?

A. Yes.

Q. What were they in?

A. Oil and gas.

Q. Just bear with me a moment. Have you had prepared -- first of all let me ask you this. Let me show you what has been prepared which is a summary of the other oil and gas investments that you made. It's been marked Defendant's Exhibit 39. Does this accurately reflect those investments?

A. Yes.

Q. And I notice that you made an investment in 3 different ventures; is that right?

A. That's correct.

Q. Is One or them called the Pattison or the Clemens No. 1 is that a well?

A. Yes.

Q. Where is it?

A. I forget the state it's in but it's a state other than Mississippi. It's in the midwest.

Q. And your investment --

A. I made it with Bill Pittman who made an investment in the same well and it was a man we knew from New Orleans named Buz Pattison who owned Pattison Petroleum Corporation and I met him before.

Q. Pattison Petroleum Corporation Clemens No. 1?

A. That's correct.

Q. And you invested I see total $6,250?

A. Yes.

Q. Would then reflect on here the moneys that you have received from 81 on through 84 on that investment?

A. Yes.

Q. Is that correct?

A. That's correct.

Q. And how did you finance that investment?

A. I borrowed money from the bank.

Q. In that same year, I see that you made an investment with Chevron at a well at Pointe Coupee Parish, Louisiana?

A. That's correct.

Q. Was this the result of speaking to one of those friends you mentioned?

A. Yes, Robert Sockett. Robert and his wife, Barbara and I invested. His name Robert and his wife are in that particular investment. They had much larger investment than we did.

Q. And you and your wife invested in this?

A. Yes.

Q. And I see there's a total of just under 10,000, $9,814.50. Where did you get the money?

A. I borrowed the $10,000 from the bank to do that.

Q. What bank?

A. The Mississippi Bank in Jackson.

Q. And then again the income is reflected on income from 81 to 84 is also reflected on this document?

A. Correct.

Q. And I notice that in each case you have not at least through 84 received a complete return on your investment; is that correct?

A. That's correct. I haven't gotten ~~my money~~ back through 1984 the money I invested.

Q. On both, either one of those?

A. On either one.

Q. The third investment GeoSouthern Corporation Winnie No. 1; is that the name of the well?

A. Yes.

Q. And you invested 10,985 in late 1981; is that correct?

A. Yes.

Q. And you received a --

A. I invested in that with my banker Bill Pittman also who invested a like amount I think in that particular well.

Q. Through 1982, you had received a return on that just under $11,000 investment $2,700?

A. Yes.

Q. 2,759?

A. Correct.

Q. What occurred in 1982? Did you sell your interest in that investment?

A. Yes, I did.

Q. Was that as a result of any lawsuit being filed in the Southern District of Mississippi?

A. Yes.

Q. Did you know that there was going to be a some litigation arising out of that well?

A. There was an apparent misunderstanding. I knew that some claim was being filed on behalf of all of the royalty owners.

Q. Were you just one of many royalty owners?

A. I was one of many, yes.

Q. Go ahead.

A. Now Judge Tom Lee who was before he went on the bench was another. He's now one of our new United States Distric judges. He was one bigger investor than I was.

Q. Aside from that, there are many others?

A. Oh, yes.

Q. And I asked you, you knew there was some sort of a dispute?

A. Yes, with reference to the alleged violation of the security laws.

Q. Now did you know that there was going to be a piece of litigation filed in the Southern District of Mississippi?

A. It was a misunderstanding apparently. I thought a claim was being pursued. I didn't know suit was going to be filed but I thought that if it was it was going to be filed in Texas in the United States District Court.

Q. In any event, did you learn that a suit had been filed with you being named as a named plaintiff?

A. Yes. Not only was I named plaintiff in the suit filed in the United States District Court in this district but the case actually was assigned to me by random and I was shocked when I found out. I think my deputy courtroom clerk brought it into he and said here's a case assigned to you it's your case, you're a plaintiff. To say the at least, I was greatly surprised and shocked.

Q. What was the first thing you did?

A. The first thing, of course, immediately recused myself fr the case.

Q. Which means the case is reassigned to another judge?

A. Yes.

Q. What else did do you with respect to your interest -- let me ask you another question. The case was going to remain as a suit in the Southern District of Mississippi, right?

A. Correct.

Q. With at that point with your name as a plaintiff, right?

A. Yes.

Q. What further did you do to divorce yourself from the case?

A. Well, I thought it was very inappropriate for me to be a party to a suit in my own court even though I wasn't the judge presiding. At that time, I was chief judge of this district. So I went to Bill Pittman, my banker through whom and with wh I invested and I said Bill, I've got to sell this interest. Would you please find a buyer for me if you can. He said judge, I invested and I put you in this deal. He said I'll give you the money back less what you received on it. That's what we did.

Q. Basically netted out without any profit without any loss?

A. That's my best recollection. That's the way it figured.

Q. By the way, in the years 81 and thereafter, are each of these investments are they reported? I noted earlier they all again in 1981. Are they reported on your financial disclosure statements then for the years following?

A. Yes.

Q. Let me show you what has been, I will mark --

A. I say I was chief judge at the time. I may been incorrect. I became chief judge in 1982 in September. So it may have been a little bit before that time, but I was one of the 3 judges of this district at that time.

MR. FAWER: Bear with me one moment.

MR. FAWER:

Q. Let me show you one of the filing for 1981 and 1982. Defendant's Exhibit 40 is the return, excuse me, the disclosure report for the year 1981 filed in 1982, correct?

A. This is the amended report, yes.

Q. For 1982?

A. For the year 1981.

Q. I beg your pardon.

A. Filed by me in -- for the year 1981 filed by me in 1982.

Q. Let me understand something. In each of the years is there a judge up in Washington who one of the sitting judges whose job it is to oversee the receipt of all of these reports?

A. Yes. Judge Edward Tamm, T-A-M-M. He's now deceased. I think he died this last year. I don't know who replaced him.

Q. In each year was it -- would there be a request from Judge Tamm or from his office that there was some alleged information or some error made on the return and he'd send it back for clarification or amendment?

A. That's not why it's not uncommon.

Q. Is that why it's an amended record?

A. Yes.

Q. Did that occur in other years?

A. Yes.

Q. Is the return to say the least a sort of complicated return in terms of figuring out what columns? Looks a little bit like a Chinese menu. Who figured out this report?

A. I wouldn't attribute it to a judge.

Q. The type conduct of judges?

A. I don't know who prepared it frankly.

Q. Let me show you Defendant's Exhibit 41 and show you Defendant's Exhibit 39, a listing of the interests and the income. On Defendant's Exhibit 41, I notice you have the Fairchild Construction Company and there's columns in which you're supposed to reflect the amount of income you got from each but you don't tell them -- you're not supposed to tell us the amount. You just check whether it's in each column represents like 1 to 5,000 to 25 to 50 and 5 to 10. It's you put an X in that box?

A. That's correct.

Q. Would you fill out and prepare the form or your secretary or accountant which is it?

A. My C.P.A. and in conjunction with my secretary.

Q. And for the year 1982, not only do you have Fairchild Company, but I see the others, Patterson and Geosouthern and the Point Coupe, right?

A. Yes.

Q. From looking at one of these, I notice that at least as to two of these investments, you reported income, at least whoever prepared the report, reflected that you had income greater than you really received?

A. I overstated my income.

Q. Was that done intentionly to mislead anyone?

A. If it had been understated someone would suspect, but it was overstated. I didn't receive as much income as I reported.

Q. By the way, did -- is this something you only came to realize during the course of preparing for this trial?

A. Yes.

Q. As I say, it was, you had not done the preparing, the check marks, the "X" marks was not done by you?

A. That's correct.

Q. Okay. One other --

MR. FAWER: Your Honor, would this be a good time to take a break? I'm going to be moving on?

THE COURT: We'll take a short recess.

MR. FAWER: Thank you.

(Recess.)

THE COURT: Proceed.

MR. FAWER: Thank you.

BY MR. FAWER:

Q. Judge Nixon, we just talked about the reporting of this information on the oil and gas investments on the financial disclosure statement. Let me just go back for a minute. When you made this transaction, engaged in this investment, did you recognize in your own mind that you could lose money on that transaction?

A. Certainly.

Q. When you made that investment, did you have any belief that it was anything but an arms length transaction?

A. Positively not.

Q. Okay. Did you have any thought that you were paying anything but fair market value for it?

A. No.

Q. When you made, engaged in the transaction with Carroll Ingram or discussed, you first were introduced to Wiley Fairchild, did you have anything in your mind that there was anything that you were agreeing to do, or exchanging with Wiley Fairchild because you were investing in this transaction?

A. No.

Q. Was the only thing that you were obligated to do, was there anything you were obligated to do in your mind beyond the paying of the return on the principle and the interest on those notes?

A. No.

Q. Okay. Let's turn then, you said the disclosure statements, at least the first was around the time of the recording of the instruments in the spring of 81, correct?

A. Yes.

Q. And during the period of the spring of 81, summer of 81, did you ever follow up on what Wiley had asked you, Wiley Fairchild had asked you to do by giving him a call or dropping in on him?

A. Yes.

Q. Were there times during that period of time, during that period when you held court right here in Hattiesburg in this courtroom?

A. Yes.

Q. Was -- by the way, was it this courtroom or the other one or both?

A. Well, it was this courtroom before I became chief judge, and then later it was the other courtroom, that was the courtroom and chambers assigned to the chief judge on the other side of the building, and this courtroom and chambers were assigned to the other two judges.

Q. During that 1981 --

A. I might say, Judge Russell moved out voluntarily, I didn't ask him to. He told me he wanted me to take that over when I became chief judge.

Q. That's not until 1982?

A. Correct.

Q. In 1981, spring of 1981, in that period, did you recall calling Wiley Fairchild and paying him a visit?

A. Yes.

Q. Approximately when was it?

A. It was in May of 1981.

Q. Right around that time?

A. Yes.

Q. Is it your recollection, were you passing through, holding court, what was it?

A. I was holding court in Hattiesburg.

Q. You called him or he called you?

A. I called him.

Q. Okay. And why did you call him?

A. I called him because he asked me to. I wanted to find out how things were progressing, if there had been income from the well, I thought I would pay him a visit, at least talk to him on the phone.

Q. Okay. And did you do so?

A. Yes.

Q. Did you go over to his office?

A. I did.

Q. Do you have a chat with him?

A. Yes.

Q. Same office you had met him in before?

A. Yes.

Q. Just you and he?

A. Correct.

Q. At that time did you ask him about what's going on with the wells?

A. Yes.

Q. What did he tell you?

A. He told me things were progressing, he thought they were going to be good wells, reminded me again it was a risk, I tol him I was well aware of-that fact.

Q. When you got up to leave did you say anything to him?

A. Yes, I told him that I appreciated his putting me into the deal, and if there is anything I could do for him let me know, if I couldn't do it, I'd tell him. If I could do it I would.

Q. Tell the jury what, you mentioned to him if there was something you could do you would, and if you couldn't you wou tell him. Is that something you told other people?

A. Yes.

Q. Why is it something you have told other people?

A. There are certain things a federal judge can't do. For instance, giving legal advice, I've had a lot of friends and acquaintances call me and ask for legal advice, stop me on the street, at a get-together, it's embarrassing. You don't want to be rude to anybody and I'm not, but you've got to tell the that you couldn't give legal advice.

Q. You've been a judge?

A. Tell them to see a lawyer.

Q. Judge now for 17 years, right?

A. 18 years in July.

Q. Okay. But during that period of time is it your understanding and perception that at times non-lawyers do not really understand what a federal judge can and cannot do?

A. Yes, and that's understandable.

Q. They are not lawyers?

A. Yes.

Q. They are not judges?

A. Correct.

Q. And is it something you have said on any number of occasions to other people?

A. Yes.

Q. Okay. Is there anything more to it than what you just said?

A. No.

Q. Okay. You leave at that time?

A. Yes.

Q. During the period following the middle of 1981, let's say, from that period until the beginning of 1983, okay? Have you got that in mind?

A. Yes.

Q. An 18 month period, were there some times, did you speak to Wiley Fairchild by calling him?

A. Yes.

Q. Did you talk to him about -- did you visit him on occasion?

A. Between what years?

Q. Mid-81 and beginning of 1983?

A. No.

Q. Okay. Did you speak to him though?

A. Yes.

Q. Were there times during that period that you asked him about the wells and the progress?

A. Yes.

Q. Did you ever discuss or did he ever mention to you that the wells during a given period of time were on line?

A. Yes.

Q. You understand, is that a phrase you understood when he mentioned it to you?

A. I had to ask him what he meant by on line.

Q. What did he tell you?

A. Found out it meant producing.

Q. In early 1982 did Carroll Ingram bring any documents or call you about some documents that you needed to sign?

A. Yes.

Q. What were they?

A. They were called division orders, and Carroll told me unt they were signed and sent in the royalty owners could not receive any income from the wells.

Q. Okay. Prior to your getting his calling about the division orders, did you know that the wells were producing?

A. Yes.

Q. Did you know anything more than just that fact?

A. No.

MR. FAWER: Okay. Indulge me one moment. Defendant's 33 and Government 26.

BY MR. FAWER:

Q. Did Carroll -- May I proceed, Judge?

THE COURT: Yes.

BY MR. FAWER:

Q. Did Carroll Ingram bring you these division orders to sign?

A. Whether he brought them or sent them to me, but he got them to me. I signed.

Q. You opened then, signed the documents?

A. Yes.

Q. Had you ever signed documents like this before? Had you ever signed division orders before?

A. If I did, I don't recall, back when I was practicing law many years before I think I had. I don't know whether I signed one or not.

Q. In any event --

A. Twenty years before.

Q. Take a look at Defendant's Exhibit 33. Is that your signature on each of the division orders?

A. Yes.

Q. Okay. I notice they are dated January 19, 1982. Is that approximately the time that you recall that these were signed?

A. Yes.

Q. I notice something interesting. You heard, did you ever know a man by the name Skip Jarvis?

A. No.

Q. Before you saw him in this courtroom, did you ever see him?

A. No.

Q. Did you know that, on this document apparently the typewritten says Walter O. Nixon, and underneath your signature Walter O. Nixon, somebody changed the O to an L. Who did that?

A. Looks like something I did.

Q. Okay.

A. I don't recall doing it.

Q. Why would you have corrected it?

A. Because that's my middle initial is L.

Q. Not O?

A. No.

Q. Did you know anybody had intentionally put the wrong initial down there?

A. No.

Q. Until someone was in this courtroom?

A. No.

Q. Do you know of any reason why anyone should do that?

A. Of course not.

Q. You signed these and sent them back to Carroll?

A. Yes.

Q. In any event, that would have been in early 1982, correct?

A. Yes.

Q. During the year 1982, did you begin receiving some payments, royalty payments on the wells?

A. Yes, I did.

Q. And from whom did you receive those payments?

A. From Fairchild Construction, W. R. Fairchild, I [illegible] exactly.

Q. They have been introduced in evidence?

A. Yes.

Q. What did you do with the checks?

A. Deposited every one of them in the bank account?

Q. There is a document in evidence marked Government Exhibit 26 which is a listing by date of each of the checks you have received, you've seen it, it's an accounting, am I correct?

A. Yes.

Q. I notice that in March of 1982 -- by the way, the notes, do you recall when the due dates on the notes were?

A. Yes, they were February 25, 1983.

Q. Okay. Did you have any obligation to make any payments before that date?

A. No.

Q. I notice, however, in March, mid-March of 1982, you paid five thousand dollars note payments, which I believe were interest and principle, correct?

A. Correct.

Q. Why did you make those payments at the time?

A. Because I happened to have the money and I wanted to pay them as soon as I could to save interest.

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

A. Yes.

Q. Okay. So, staying in the year 1982, did there come a time in July, let me withdraw that and let me ask you a question. You, like Judge Meredith and Judge Cox and Judge Russell are what is known as district court judges, right?

A. Yes.

Q. What is -- between you and the Supreme Court of the United

States is there another level of judge?

A. Yes, United States Courts of Appeal.

Q. For this area of the country, what is the governing Court of Appeals?

A. Fifth Circuit.

Q. In the summer of 1982, were you nominated -- I shouldn't say nominated, were you asked if you would become a member of the Fifth Circuit Court of Appeals?

A. Yes. Senator Thad Cochran and Congressman Trent Lott [illegible]

[illegible]

[illegible] I was a trial judge, district judge. I preferred to be a trial judge, district judge.

Q. And did you so advise the executive branch, or the people who wanted to appoint you that you would decline such an appointment?

A. Yes, Mr. Fred Fielding, counsel for President Reagan at the White House called -- incidently, I was in Hattiesburg holding court at the time -- he urged me to take the nomination which would be forthcoming, told me if I would agree to it, that

President Reagan was going to call me the next day. I told him I would very much like to receive the call from the president, pretend that I might want to take it, but we have definitely decided not to, I thanked him, and asked him to thank the president.

Q. I take it you did not go forward with that?

A. That's correct.

Q. Some year, December of 1982 did you become the chief judge of the Southern District of Mississippi?

A. Yes.

Q. [illegible]

A. [illegible]

Q. [illegible]

A. Yes.

Q. [illegible]

A. Right.

Q. [illegible] at a cocktail party, [illegible]. In any event, it was one of [illegible] in Hattiesburg?

A. Yes.

Q. Where was it held?

A. It was held at Bonnie and Clyde's.

Q. What is Bonnie and Clyde's?

A. It's a lounge, restaurant type operation. Mostly lounge, think they serve food there also.

Q. Who owns it?

A. As I understood it, it was owned by several people. I think Bud Holmes and Jim Dukes were two of the owners.

Q. Who sponsored this reception?

A. I was told that the South Central Bar Association was sponsoring it.

Q. Were people, were both lawyers and non-lawyers from the area and beyond in attendance there?

A. Yes.

Q. Bud Holmes there?

A. Yes.

Q. Carroll Ingram there?

A. Yes.

Q. Wiley Fairchild there?

A. Yes.

Q. Judges from the district here there?

A. Yes. Congressman Lott was there.

Q. Other friends or yours there?

A. Yes.

Q. Barbara was there?

A. Yes.

Q. Just before that, had you made another payment in reduction, further reduction or these notes?

A. Yes.

Q. Was that in the middle of September of that year?

A. Yes.

Q. That was again for the same reason that there had been money coming in, you were paying it off as quickly as you could reasonably do so?

A. Yes.

Q. Okay. Anybody pressed you for those payments?

A. No, they weren't due until February of 1983.

Q. Okay. At this cocktail, at this reception as you call it, was there, did you have occasion to speak to Wiley Fairchild?

A. Yes.

Q. Tell us how it happened, what you said, what he said?

A. Well, Mr. Fairchild came up to me and he kind of took me aside, he said I might have another investment that looks pretty good, he said -- I remember the name Board of Education, some well that was apparently referred to as that, or that was the field or something. He said I might be in touch with you about it if you're interested in investing. I said I would certainly love to talk to you about it, if you would put me in it.

Q. Okay. Had he met -- sorry, go ahead?

A. Go ahead.

Q. Had he met your wife up to that point in time?

A. No.

Q. Barbara was there?

A. Yes.

Q. Did you introduce Barbara to him?

A. Yes.

Q. What did you tell -- just tell us?

A. I told her, Honey, this is Wiley Fairchild, he's the man that put us in the oil and gas investments that are bringing us some income.

Q. And shake hands, say --

A. Barbara thanked him, told him it was nice meeting him, that's all.

Q. Were there other people around? Did you go --

A. Oh, yes.

Q. -- off to some room?

A. No.

Q. Was this in the middle of the reception?

A. It was in the middle of the reception.

Q. At that point in time, late October of 1982, okay?

A. Correct.

Q. Had you heard anything, let's say, at the end of 1982, by the beginning of 1983, had you heard anything yet of a person by the name of Drew Fairchild?

A. No.

Q. When was it that you had the first awareness of the name Drew Fairchild?

A. In the first part of 1983. I either heard something about it or read something about it in the news media or both. I'm sure I read something about it.

Q. What do you recall, do you have a distinct recollection of reading something or hearing it or there is some impression that you have of what you recall?

A. What I recall, there was something in the newspaper. I don't know whether it was Hattiesburg paper that I might have read coming through here, I would stop sometimes at the Wagon Wheel, pick up a copy of it, while I was here read it, might have been one of the other papers that I took down home. It had something about the, this particular Drew Fairchild case, and some criticism of Bud Holmes handling of it. Also something about it had been passed to the files and reactivated, brought back to the active docket, pretty critical of him.

Q. First, passing to the files and reactivating, had you ever engaged in practice in the state criminal practice?

A. Very little.

Q. Did you know what passing to the files meant in Mississippi?

A. Yes.

Q. Okay. Aside from that, having read it, did you thereafter or when you read about it have occasion to say anything to Bud Holmes about it?

A. Seem to recall talking to him about something, I don't know, just talking to him, and I told him, well Holmes, you screwed up again.

Q. Was that just commenting about what you read?

A. Yes.

Q. What did --?

A. Said there had been criticism of another case of his in the news media sometime before.

Q. What did you tell?

A. Well, damn news media always after me, criticizing me for something. Damned if you do and you're damned if you don't, and I don't give a damn. You asked me what-

Q. Would you call that a classical Bud Holmes response?

A. Yes.

Q. You could almost predict what he would say?

A. Almost, not always. You can predict he's going to say something but you can't predict what he's going to say.

Q. In February, let's turn our attention for a moment, Judge, to February of 1983, okay? The latter part of that month or the very end of that month in 1983, did your wife, was there some surgery your wife underwent?

A. Yes.

Q. What kind of surgery?

A. Periodontal surgery.

Q. Were there some complications?

A. Yes, it was done here in Hattiesburg, she was at Forrest

General Hospital. Our periodontist practices here.

Q. Okay. I take it she wasn't confined to the hospital, but there was some period when she was at home for a lengthy period of time?

A. She was confined for a while, had complications, had to stay several days here. Then confined or recuperated, convalesced at home for a while, yes.

Q. Did that go into the early weeks of March of 1983?

A. Yes.

Q. Let me show you, take a look at those checks that are attached to the notes, you can look at this listing the government put in. Did there come a time shortly thereafter, right in this period of time, when you fully paid off the notes and the interest due on those notes?

A. Yes.

Q. What date was that?

A. The last payments were made by check dated March 1, 1983.

Q. Okay. So therefore, as of that date, had you fully paid for the investments and all interest due on the notes?

A. On all three. I had paid one off earlier, three or four months, and these payments on the other two came about four or five days later.

Q. Okay. As I understand it, you made the first payment in March of 82, the second payment in September of 82, and these are the final payments, in fact a few days late in terms of when the notes were due, it was February 25, 83, these were made four days after that, is that correct?

A. Correct.

Q. Do you recall shortly thereafter being in Hattiesburg holding court?

A. Yes.

Q. And you recall the circumstances of your being here?

A. Yes.

Q. What were they?

A. I was presiding over a trial of a person charged with bank robbery, armed robbery of a bank.

Q. What was his name?

A. Douglas Chico Patterson.

Q. Bear with me one moment.

MR. FAWER:

Q. Let me show you Defendant's Exhibit 42 and ask you what that is?

A. Yes, this is the clerk sheet showing the documentation of a trial of that case.

Q. What dates did that trial take place?

A. March the 10th and 11th, 19 --

Q. I'm sorry?

A. 1983.

Q. What days of the week?

A. Thursday and Friday.

Q. And the trial took all day on Thursday?

A. Yes.

Q. And this was right here in this court record, correct?

A. That's correct.

Q. Criminal case?

A. Yes.

Q. And did the trial continue into Friday?

A. Yes.

Q. And did there come a time when the jury, when you charged the jury and the jury began deliberations?

A. Yes.

Q. About what time of day was that?

A. Approximately 11:00 a.m. on Friday the 11th.

Q. While the jury is -- then sent the jury out to deliberate

A. Yes.

Q. While the jury was deliberating what did you do?

A. I made two or three phone calls.

Q. From your own office in chambers?

A. Yes.

Q. Who did you call?

A. I called Bud Holmes.

Q. Why?

A. I had been at Bud's before, sometime before and he had some Hank Williams, Sr. records the old Hank, former Hank Williams deceased, and I wanted to -- I really liked them and I wanted to borrow them and tape them and I asked Bud if you could borrow them from him on this trip.

Q. What did he tell you?

A. I told him I had a jury out and I didn't think they would be out too long and he said yes, if I'd meet him out at the farm that afternoon late he would -- I don't remember what time exactly. After 5 that he'd be happy to loan them to me, we'd have a drink. I said farm. That's where he was living.

Q. He was district attorney at the time?

A. Yes.

Q. You would have reached him where?

A. District attorneys office.

Q. Who else did you call?

A. I called Wiley Fairchild.

Q. Why?

A. Well, I paid the notes off sometime shortly after, indebtedness on these three wells this investment and he had mentioned also that and possibly be another one so I thought I would talk to him and see how everything was coming with these particular wells. I think -- I don't know whether there had been a decline in the payments. There was at some time the royalty amounts coming in monthly and I just wanted to talk to him generally about everything. I just finished paying for these shortly before March the 1st.

Q. When you talked to him did he mention going over to see him?

A. Yes.

Q. What was his response?

A. He said he'd love to see me, come on over. He said --

Q. Go ahead.

A. Come on that entrance, that private entrance.

Q. Did you have any time, did you set a certain time or what?

A. I couldn't set a certain time. I didn't know how long the jury would deliberate. I told him probably be shortly after lunch. I didn't think be too long. I didn't know, of course.

Q. How long did the jury deliberate? Very long?

A. 45 minutes.

Q. When the jury, after the verdict was returned, were you basically free for that afternoon?

A. Yes.

Q. Did you go over to Wiley Fairchild's?

A. Yes.

Q. First let he ask you this. Did anybody summon you or call you and say Wiley Fairchild wanted to see you?

A. No.

Q. Particularly did Carroll Ingram do that?

A. No.

Q. Did Carroll Ingram go with you on that occasion?

A. No.

Q. How did you go over to Wiley Fairchild's?

A. I went in my automobile. I drove over.

Q. Did Carroll Ingram even know as far as you can recall that you were in town on that occasion?

A. I don't know whether he did or not. I didn't call him.

Q. I'm sorry go ahead.

A. I didn't call him or let him know.

Q. You go to his office and tell us what occurs as best you can recall. Tell us what happened when you went to his house I guess around March 11th is this?

A. Yes.

Q. Of 1983?

A. Yes. I knocked on the door and went in and he and his brother Rodney were in there and we talked a little while. He turned to Rodney, he said in a gruff voice, Rodney, get out of here.

Q. Had you met Rodney before?

A. I'm not sure whether I had or not. I'd heard the name.

Q. Had you ever heard Wiley speak to his brother or anyone else like that?

A. No.

Q. Were you somewhat taken aback?

A. Yes.

Q. Did Rodney leave?

A. Yes.

Q. Tell us what happened.

A. Mr. Wiley said judge, you're a good man and you've got a real good reputation. He said I want to tell you about something. He said I'm mad as hell. He said Bud Holmes -- he said I got a son -- the way he started out, he said I got a son named Drew Fairchild. And I said -- he said he got in some trouble out at the airport involving drugs. I said yeah, I read something about it not long ago.

Q. You said that?

A. Yes.

Q. Go ahead.

A. And he said well, he got a deal made and I don't give a damn what happens. It looks like a good deal. He said he's given me trouble all his life and I'm not trying to do a damn thing to help him but I'm tired of my name being drug through the news media. He said I believe Bud Holmes is blackmailing me and he said I think Carroll Ingram might be in it too.

Q. Did he say why he thought he was being blackmailed?

A. No, but what I gathered he was talking about publicity. He said the Fairchild name is being drug through the mud in the news media. He said I spent a long time making that name a good name.

Q. Was anything else mentioned aside from that? Did he -- first of all let me ask you this. Did he seem angry? How would you describe his state of mind?

A. He was very angry and he also mentioned somebody else, I don't remember the name, that was involved in the drug deal. He said hadn't even been charged or indicted.

Q. There's been a name of another individual named Robert Royals. Do you recall that that was the name he mentioned?

A. I don't recall.

Q. Do you recall if he even mentioned that person's name?

A. I do not recall.

Q. Do you know or had you ever heard of Robert Royals?

A. No.

Q. When he told you this, what did he say, anything? What did you do?

A. To say the least, I was in shock. Here was a man who had a business transaction with, he was an elderly gentleman, he appeared to be sincere in what he was saying but at the same time he was accusing 2 friends of mine of blackmail.

Q. Did he ask you to do anything?

A. No.

Q. Did he discuss or you discuss with him in any way the case of Drew Fairchild?

A. No, I did not.

Q. Did you get the impression from him that he wanted you to say anything to anyone about it?

A. I got the impression that he wanted me to mention something about that to Bud Holmes.

Q. Did he make any request of you to do so?

A. No, he didn't.

Q. Did that -- have you told the jury basically everything you remember about the conversation and the way it took place?

A. Yes, I have.

Q. Have you thought about this long and hard?

A. I certainly have.

Q. When you left, did you have any intention at that point of speaking to Bud Holmes about it?

A. No.

Q. Had you already made plans to see Bud later that day?

A. Yes, I had.

Q. Where did you go? Did you go directly over to Bud's or what did you do?

A. I came back to my chambers here. I don't remember exactly what I did, but I had various matters to read and what have you. I carry briefs with me a lot of times when I'd come up here for trials and, of course, my deputy courtroom clerk and secretary were with me. So was my law clerk and I spent most of the rest of the afternoon here in chambers.

Q. Still middle of the afternoon when you left Wiley Fairchild's?

A. Sometime around there, yes.

Q. How long would you say that meeting took place? How long did the meeting last?

A. Didn't last more than 10 or 15 minutes at the most. I was glad to get out of there.

Q. By the way, did you ever call Bud Holmes from his office?

A. No.

Q. Aside from the call that you had made that morning to Bud concerning wanting to get the Hank Williams records, did you call him again that day before seeing him that evening?

A. No.

Q. Tell us what occurred when you left this courthouse?

A. I drove out to Bud's farm or home and met him out there. I don't know whether I got there first or he did.

Q. About what time are we talking about?

A. Late afternoon.

Q. If he wasn't there, does he have a caretaker or someone who's around the house usually?

A. Yes, normally.

Q. What's the name of the person?

A. Haskel.

Q. You don't recall whether you got there first or he did?

A. No, I don't.

Q. Let me ask you a question. You've heard Bud Holmes that you drove out whether the two of you drove out together in his car. Did you drive out that evening in his car or did you drive out by yourself?

A. By myself.

Q. Tell us what happened when Bud and you were together. Describe it as best you can to this jury.

A. All right. Well, I was in there with Bud and we started listening to Hank Williams records. And he had a bottle of Royal Salute scotch which is a high priced scotch and I used to joke with him about better have some Royal Salute if I ever came out to have a drink with him. And he asked -- poured me a drink. I don't remember what he poured himself and I was listening to the records and looking at them seeing which ones I was going to borrow to take home and tape. He was on the phone most of the time as usual.

Q. In other words, when you're there, he mixed you a drink, you're looking at the records and it's your recollection he was making some calls as well?

A. Receiving and making.

Q. That was not unusual with him?

A. Not at all.

Q. Do you know the extent to which he had had any drinks before he arrived there?

A. I don't know but he didn't appear to be as sober as a judge.

Q. In any event, had you had any drinks before that?

A. No.

Q. Tell us what happens then? What if any discussion do you have with him at that time? Is there some seats? Is this like a den?

A. Yes.

Q. And is there a bar or is it just a cabinet? What is it?

A. It's sort of a little cabinet and, of course, a record player was in there. There was seats and a telephone and a king size bed.

Q. Tell us what happens.

A. Well, we were talking and this thing was just weighing on my mind what Mr. Fairchild had accused him of.

Q. Tell us what you said; what he said.

A. I said Bud, I've been talking to Wiley Fairchild. And I said he is accusing you of blackmailing him. He said -- I said with reference to this matter some matter with his son. And --

Q. Did you mention to him -- now listen to my question. You mentioned the blackmail. Did you mention to him at all how yo understood he was being blackmailed?

A. Yes, what I understood by blackmail, Mr. Fairchild indicated to me talking about dragging the good Fairchild name through the mud in the news media.

Q. When you told that to Bud, what did he say? Tell us exactly what you remember him saying?

A. He said the son of a bitch is paranoid. He said everybody is after his money, he's got so much he'll never be able to spend it, he's crazy.

Q. What else did he say?

A. He said let me tell you about the case.

Q. What did you say?

A. Bud, I don't want to hear about the case.

Q. Let me stop you a second. Was there anything wrong in your hearing about the case?

A. No, I'd have been there all night because it takes Bud an hour to tell you what anybody else could tell you in a minute.

Q. Did you have any interest in hearing about the case?

A. No.

Q. When you told him that you didn't want to hear about the case, what did he say?

A. He said well, the thing's all worked out anyway. He said, I don't understand what he's talking about.

Q. Did he tell you anything else?

A. I don't recall that he did.

Q. Was there any -- he told you when he said to you the thing's worked out, he doesn't know what he's talking about?

A. Yes.

Q. Did you say anything more than that to him?

A. No.

Q. What did he do then?

A. I went back over and was -- you know sat around and talked a little bit. Went back over by the records.

Q. Did he have any more to drink?

A. Yes. He poured himself another drink I think.

Q. Did you have another drink?

A. I had one more drink before I left.

Q. I mean do you drink a lot by the way?

A. No.

Q. You do drink though?

A. Yes.

Q. Is there any reason why you'd limit the amount that you'd drink that night?

A. Well, first of all I don't drink that much to begin with and secondly I was getting ready to drive back home to Ocean Springs.

Q. Did you listen to some more records?

A. Yes.

Q. Were you picking out any records?

A. Yes. Trying to select them. He was on the phone again.

Q. Making more than one call?

A. Yes, I think so.

Q. What else happened?

A. It's hard to tell. He had 2 phones there, 2 separate lines. I've seen him with 2 phones one in each hand at a time.

Q. If he had another hand, there would be a phone in it?

A. I would guess so.

Q. Coming back all seriousness while you're there listening to records having a drink and looking at the records, while he's making these calls, tell us what else occurs?

A. In a few minutes he said, called me over, judge come here a minute. He called me judge and I called him Bud. He handed me the telephone. He said here, talk to Wiley Fairchild.

Q. Go ahead.

A. So I took the phone and I told him hello and he said how are you judge, and I don't know whether Mr. Fairchild was half asleep or half drunk or what but he didn't sound just right. And he said I'm glad you mentioned that matter to Bud. He said I'm satisfied.

Q. Anything else?

A. No.

Q. What did you do with the phone?

A. I handed it back to Bud. When he handed it to me, he told me he wanted to talk to him again when I got off.

Q. Do you have any awareness at that point what Bud had said

to Wiley before he handed you the phone?
A. No.
Q. What was your state of mind or how did you feel about Bud having made that call to Wiley?
A. Well, I was taken aback. I didn't know he was going to call Wiley Fairchild.
Q. Did Bud then speak to him for another minute or two?
A. I guess so. I handed him the phone and walked back over by the records. I was disgusted.
Q. Did you say anything to Bud after he got off the phone?
A. Yeah, I said Bud, why did you call Wiley and what did you say to him. He said I just wanted to get the damn thing straightened out.
Q. That's it?
A. That's all.
Q. What happened then?
A. I selected the records or had selected the rest of them and told Bud I appreciated his loaning them to me. I took them and went home. Drove home to Ocean Springs.
Q. That evening you drove back to the Coast?
A. Yes.
Q. When you got back to the Coast, was Barbara in bed?
A. Yes.
Q. Did you see her that evening?
A. Yes.

Q. Did you say anything to her about anything?

A. Yes, I showed her the records I had in my hand and told her I had borrowed them from Bud and I asked her if she would tape them for us and I asked her to come listen to some of them.

Q. Show you Defendant's Exhibit 31. Is that the group of records that you borrowed that night?

A. I think they are. They look like the same ones.

Q. Are those the -- have you had them from that date until now?

A. Yes, and frankly I forgot I had them till all this came up.

Q. Let's go back to that conversation. First of all, did you ever discuss the Drew Fairchild case that evening with Bud Holmes?

A. No.

Q. Why did you even -- why was it that you told us when you went there you really didn't have any intention or when you left Wiley's of mentioning this blackmail accusation to him; why did you?

A. I don't know. It was weighing on my mind and I wanted to -- I guess I just don't know.

Q. But you did mention it to him?

A. Yes.

Q. Did you ever mention that allegation to Carroll Ingram?

A. No.

Q. Why not?

A. Well, I didn't think there was anything to it to begin with and he didn't sound nearly as positive about Carroll Ingram when he made his complaint as he did Bud Holmes. I thought the matter was resolved there that evening and there wasn't any need to mention it to Carroll. Of course, you saw Carroll's reaction anyway when you even mentioned it to him in court. I thought that might be his reaction. There wasn't any reason to it. I thought it was nonsense but the man was sincere in his complaint.

Q. That evening with respect to it, did Wiley Fairchild ever ask you to do anything concerning his son's case?

A. No, he did not.

Q. Did you even discuss Drew's case with Wiley Fairchild?

A. No.

Q. Did you ever say a word to him in response to his complaint about Bud Holmes?

A. Just as he said, no. He testified here.

Q. Did Carroll Ingram ever ask you or summons you to see Wiley Fairchild that day?

A. No.

Q. Was Carroll -- did you ever see Carroll Ingram that day?

A. No.

Q. Was Carroll Ingram, were you ever at Bud Holmes's office that day?

A. No.

Q. Was Carroll Ingram to your knowledge I take it that he wasn't with you at Bud Holmes's office?

A. No, he wasn't.

Q. Have you ever do you ever recall being at Bud's office with Carroll Ingram?

A. No.

Q. Did you have any conversation concerning this subject with Bud prior to getting to the farm?

A. No.

Q. I take it ~~therefore~~ you did not drive with him to the farm?

A. No.

Q. Have you told us as best you can recall what occurred at the farm that night?

A. Yes.

Q. You've heard what Bud Holmes has attributed to you as having been said that night?

A. Yes, I have.

Q. Is it true?

A. Absolutely not.

Q. Did Bud Holmes ever in your presence offer to pass the Dre Fairchild case to the files?

A. No.

Q. To your knowledge what was the status of that case at the time of this conversation in March of 83?

A. I don't know.

Q. What had you in terms of -- had you already read something about the case?

A. Yes.

Q. And what was that?

A. That it had been passed to the files and brought back to the active file or reactivated.

Q. Had you any knowledge beyond that at the time of this conversation?

A. No.

Q. Bud Holmes and you were here when Bud Holmes testified, you heard him say that in your conversation with Wiley Fairchild that you thanked Wiley Fairchild for putting you in the investment and had a lengthy discussion with him explaining why you needed to supplement your income and that you were happy; do you recall that testimony?

A. I do recall it.

Q. Did you have any such discussion with Wiley Fairchild that night?

A. No.

Q. Judge, was Bud Holmes telling the truth in describing your conversation with him that night?

A. He certainly was not, Mr. Fawer.

Q. Have you ever been to Bonnie and Clydes with Bud Holmes?

A. Yes.

Q. Aside from October 28th when the reception was held, have you been to Bonnie and Clydes?

A. I think once or twice.

Q. Were you there that night?

A. No.

Q. What makes you -- you were at Bud Holmes that night you described your being there. What makes you say that you weren't at Bonnie and Clydes that night as opposed to any other night?

A. Because I wasn't there.

Q. Was there any reason why you wanted to get back to the Coast that evening?

A. Well, yes there were 2 reasons. One, it was getting late but the primary reason was Barbara had had that surgery and she was recuperating and I wanted to get on home as soon as I could.

Q. Now that was in -- have you told us as best you can recall everything that occurred in that period in March of 83 concerning your conversations with Wiley and your conversations with Bud and or the telephone call?

A. Yes, I have.

Q. By the way, your being on the phone with Wiley, did that last more than 10 seconds?

A. No.

Q. I want to come back. You have heard Bud Holmes testimony under oath concerning your presence in Hattiesburg this city on May 14th, 1982 am I correct?

A. Yes, you're correct.

Q. Now that's the date he attributed this conversation to you; am I right?

A. Right.

Q. First of all, were you in Hattiesburg for one minute on that day?

A. No.

Q. Where were you?

A. I was in Biloxi.

Q. Tell the jury -- pick up first of all tell us why you weren't -- how you know you were in Biloxi that week on that day rather and the events of what was going on in your professional life that very week of May of 1982.

A. Well, we were getting ready to try the asbestos case the lead case of Jackson Versus Johns Manville it was probably the biggest case that we had ever had tried and very important case because it involved the precedent for all these injured people who had had asbestosis and some the mesothelioma, a cancer of the lungs as a result of these asbestos fibers allegedly getting in their lungs. And we were preparing for that trial and had set aside I think 4 or 5 weeks for the trial itself and also, of course, I held voir dire of the jury and selected the jury and set three days aside for that the week before beginning Wednesday May the 11th.

Q. What three days --

A. 12th rather. Pardon me. Go ahead.

Q. I'm lost in your answer and my question.

A. All right.

Q. Which is it?

A. Go ahead. I'm sorry.

Q. I'm sorry. My turn.

A. Okay.

Q. What day did jury selection when did you set jury selection?

A. May 12th.

Q. Wednesday?

A. Yes.

Q. And how many days did you set aside for it?

A. Three, Wednesday Thursday and Friday.

Q. By the way, normally in this case there's one judge sitting, 99.9 out of a hundred cases I guess one judge sits, right?

A. Yes.

Q. For some reason this case was so important not only were you going to sit but Judge Roper was going to sit?

A. Yes.

Q. Why were you going to have 2 judges?

A. He had been living with these asbestos cases. He had held numerous conversations with the attorneys. He had heard many pretrial motions nondispositive motions including discovery motions. He knew the ins and outs of the case. That was his assignment, one of his principal assignments to do all this and get the case prepared for dispositive motions and pretrial and the trial and he was very familiar with everything and he sat with me I think in the selection of the jury and certainly in the trial of the case.

Q. The week previous to the jury selection the week of May 2nd through May 8th, were you available to prepare yourself or together with Judge Roper for that asbestosis case?

A. No.

Q. Where were you?

A. Fifth Circuit Judicial conferance in Texas.

Q. San Antonio?

A. Yes.

Q. How long were you there?

A. Conference began Sunday,.

Q. That would be May 2nd?

A. May 2nd. And it ended Wednesday, but since Barbara and I were there and I knew that I was going to be tied up on this asbestos case for weeks, not only would I be working on it a lot at nights, but would be very tired, we decided to stay until the weekend.

Q. And did you do that?

A. Yes, we did.

Q. You were in San Antonio from the 2nd until Saturday or Sunday?

A. Saturday or Sunday.

Q. The next two days, two days left then in the work week before the beginning of voir dire, am I correct?

A. Right.

Q. What were you doing on Monday and Tuesday? Did you have time to prepare for the asbestos case?

A. Monday I had motions in other cases, dispositive motions, most of my other cases. I say most of them, many of my other cases set and heard them all day Monday.

Q. How about Tuesday?

A. Tuesday I forget exactly what it was, but I know I was busy Tuesday.

Q. Okay. It was involving matters --

A. Unrelated to the asbestos case.

Q. Did the voir dire go all day Wednesday?

A. Yes.

Q. And continued, the selection continued all day Thursday?

A. Yes.

Q. When did it end?

A. Ended late Thursday.

Q. Okay.

A. Jury was selected and sworn.

Q. By the way, was this a jury that was going to be sequestered?

A. Sequestered, the attorneys had requested that. The case was quite notorious in the news media, so this was one of those rare occasions when we would have a sequestered jury in a civil case.

Q. Okay. Did however did you make a decision, the jury was selected and empaneled I guess on the evening or late in the afternoon of Thursday, the 13th?

A. Yes.

Q. With the agreement of counsel, what was decided about the sequestration?

A. I called counsel in and asked them if they would agree to let me, let the jurors go home over the weekend since we had selected them Thursday and we weren't going to begin the trial until Monday. I know they wanted to be with their families, wanted to get ready for the long trial, so they agreed and I let the jury go home and come back Monday.

Q. As a practical --

A. To their respective homes.

Q. Practical matter they ended up -- about three weeks of the trial?

A. Yes.

Q. Coming back now, had you expected the voir dire to end that quickly?

A. No.

Q. On Friday therefore there was no voir dire any more, right?

A. Correct.

Q. What did you decide on Thursday to do with the day on Friday?

A. Since we had finished a little early, I decided to hear what's called in limine motions, motions which dealt with the admissibility of evidence during the trial and what have you. It would save us time, save me time taking time out and hearing arguments during the trial and ruling on the admissibility of evidence during the trial.

Q. Did you do that Friday morning?

A. Yes.

Q. There is a document, Defendant's Exhibit 30 in evidence, which reflects those motions having been heard that day; how long were you in court?

A. Took an hour and a half in court.

Q. Did you sit together with Judge Roper?

A. Yes. I think we did, I think he sat with me. I'm pretty sure he did.

Q. Okay. You heard him testify that was his recollection as well?

A. Yes.

Q. You know you were there, right?

A. Yes.

Q. What did you do for the balance of that day, what's your best recollection?

A. My best recollection is I prepared for the trial of that asbestos case that was beginning Monday. Read the pretrial order again, went over proposed jury instructions, read some of the depositions with respect to the motions that I had to decide, the admissibility of certain evidence and what have you.

Q. That took place, where were you?

A. In Biloxi in my chambers.

Q. Who was your law clerk at the time?

A. Mark Carlson.

Q. That's the gentlemen, young lawyer who testified this morning?

A. Yes.

Q. What was your practice with respect to even less significant -- less significant, all cases are important. But cases that are, aren't as complex, what day of the week do cases normally begin?

A. Monday.

Q. And what was your practice at that time with respect to the Friday afternoon preceding such a trial?

A. To sit down with my law clerk and go over any problem areas that we anticipated, talk about the case, talk about various aspects of it.

Q. Do you have any specific recollection or any particular discussion you had with Mark on that day?

A. No, not specifically.

Q. Did you and Mark, the two years he was there, discuss these every day that you were together?

A. I don't understand the question.

Q. Did you have occasion to work with Mark or he with you everyday while he was working for you?

A. Correct.

Q. And were there matters that were still pending that needed to be addressed or for you to understand before the trial began on the 17th?

A. Very definitely.

Q. In any event, as you sit on the stand, are you positive that you did not come to Hattiesburg that day?

A. Yes.

Q. Where did you spend the entire day?

A. In my chambers in Biloxi.

Q. Let me show you one other thing. Could I see, the document that's been introduced in evidence, could I have Defendant's Exhibit 30 and the Holmes calendar. I see, you were near when this document was introduced in evidence, correct?

A. Yes.

Q. Let me show you Defendant's Exhibit 30. Is this the docket sheet for your -- for the events of the asbestos case showing that on May 13th you were in court all day?

A. Yes.

Q. And that the following day that you were in court from nine to ten-thirty, correct?

A. On the 12th all day, and --

Q. Talking only about the 13th?

A. I'm sorry. From what now?

Q. 13th you were in court all day, right?

A. Yes.

Q. You were in court from 9:30 to 12:15 in the morning?

A. Correct.

Q. From 1:30 to 4:45 in the afternoon?

A. Right.

Q. That's the 13th?

A. Yes.

Q. You have already told us what you did on the 14th, right?

A. Yes.

Q. That's reflected on the other document relating to motions on the 14th, right?

A. Yes.

Q. Let's look at this calendar. You've had nothing to do with this calendar?

A. Never seen it before.

Q. Yet your name appears on what day in May as having been at Bud Holmes' office?

A. Thursday, May 13th, 4:15.

Q. And you were where, according to the official court records of this court at that time on May 13th?

A. I was in Biloxi selecting a jury for the asbestos case from 9:30 until 4:45 p. m.

Q. Do you have any knowledge when this, this word, these words Judge Nixon, got on this document?

A. No.

Q. Who had possession, whose calendar is this?

A. Well, I've been told it's Bud Holmes'.

Q. And on the following day as you just testified, where were you the whole day?

A. In Biloxi.

Q. And do I, I take it from the calendar there is nothing on the calendar with any names on it on May 14th, am I correct?

A. That's correct.

Q. Between March of 83 and April of 84, you got the span of time I'm talking about?

A. Yes.

Q. For the following year, did you have any face to face meetings with Wiley Fairchild?

A. No.

Q. Did you have occasion to call him?

A. I might have called him once or twice.

Q. Anything more than chitchat?

A. That would have been in 83?

Q. During the remainder of the year 83?

A. Yes.

Q. How many times, one time?

A. I don't recall. Wouldn't have been many, if any.

Q. At any time after, from the year 83 or beyond, did you ever discuss Drew Fairchild in any way with Wiley Fairchild or Bud Holmes?

A. No.

Q. During the year 1983, sort of left Carroll Ingram sitting off in left field, but is it fair to say that during the time we talked about in 81, 82, 83, you continued your friendship with Carroll, right?

A. We remained friends, yes.

Q. You would see him on occasion?

A. Yes.

Q. Talk to him?

A. Yes.

Q. Did you mention to him, he was, by the way, he was one of those who was at the reception at Bonnie and Clyde's?

A. Yes.

Q. Had you ever mentioned to him in 1983 that Wiley Fairchild had mentioned another investment to you?

A. Yes.

Q. Why did you mention it to him?

A. Carroll had been the one that introduced us and put me in the first investment. We were talking, and I mentioned that Wiley Fairchild had mentioned to me at that reception back in 19 -- at the reception about another deal.

Q. That was back in 82?

A. That was possible in October of 82 that he might have something and would get in touch with me.

Q. In talking to Carroll Ingram, did you mention to him that you had passed on a complaint of Wiley about Bud?

A. Yes.

Q. To Bud?

A. I didn't tell him a complaint, I told him Wiley had asked me to pass something on to Bud and I had done it.

Q. Did you say this in any secretive way to Carroll?

A. No.

Q. Any embarrasment about --

A. No, there wasn't any reason to be.

Q. Was there any reason why you were guilt ridden, conscience stricken in talking to Carroll about it?

A. Of course not.

Q. By the way, did you ever engage in another investment with Wiley Fairchild?

A. No.

Q. Okay. Was your comment to Carroll Ingram simply something you were telling him because he had originally introduced you to Wiley?

A. Yes.

Q. Let's direct your attention to April of 1984. Would you indulge me one moment? Let's approach the bench one moment.

(At the bench, not reported.)

BY MR. FAWER:

Q. Let me direct your attention to April of 1984. Specifically April 19, of 1984, okay?

A. All right.

Q. You recall that day?

A. Yes, I do.

Q. Okay. Do you know a man by the name of Weldon Kennedy?

A. Yes.

Q. Who is he?

A. He was in charge of the FBI in Mississippi at that time.

Q. Okay. You knew him by the fact he was the head of the FBI?

A. Yes, I had met him, been around him. We weren't personal friends, but we were acquaintances.

Q. Did you get a call from him?

A. Yes.

Q. Where were you?

A. I was in my ~~chambers~~ in Biloxi. In fact I think I was in court. I'm not sure whether I was in court at the time; I know I was part of that afternoon. And I called and I did talk to him. I don't know whether he got me or I returned his call when I came out of court. I think he probably got me before I went back into the courtroom that afternoon.

Q. All right. Tell us what he said to you and you said to him?

A. He said hello. Said Judge, I've got someone down here from the Department of Justice in Washington who wants to come by to see you together with one of my agents about a matter. I said okay, fine. I'll be in court, but I told him about what time I thought I would be out.

Q. Which was what time?

A. I don't recall, but it was about mid afternoon.

Q. Okay. Did he mention to you what this was about?

A. No, he didn't.

Q. Did you bother asking him?

A. No.

Q. Were you upset in any way somebody wanted to some talk to you?

A. No, I've had many FBI come talk to me about various matters at various times. I've had people from the Justice Department on matters, come down and handle these matters before me.

Q. That afternoon did you, were you told that there was somebody to see you?

A. Yes.

Q. Who told you that?

A. My secretary.

Q. And did you let them in the office?

A. Yes.

Q. Into your chambers?

A. Yes.

Q. You say your chambers, judge's offices are called chambers?

A. Correct.

Q. They're not really chambers, they're offices like everybody else's? We have to give them a different name because they are judges. In any event, tell us what occurred when you, first of all, who was it that comes?

A. Mr. Weingarten and Ken -- special agent Ken Whitespunner.

Q. Is he an FBI agent?

A. Yes.

Q. Had you known him before?

A. I think I had met him. I didn't know him well, though, like I did many of the agents who had worked in my court quite often.

Q. Had you ever worked with Mr. Weingarten before?

A. No.

Q. First time he introduced himself?

A. Yes.

Q. Who began the conversation? Tell us what was said?

A. I think he began it, either he or Mr. Whitespunner.

Q. Tell us what was said.

A. He told me he was from the Public Integrity Division of the Justice Department in Washington, and they wanted to talk to me about Redditt Fairchild.

Q. Did you know --

A. I didn't have any idea who Redditt Fairchild was. First time I heard the name Redditt.

Q. Go ahead.

A. I asked him who that was and what it was about. Then he told me it was Wiley Fairchild's son, known as Drew sometimes, and he, they wanted to talk to me about his narcotics case, and also they had been told that I had invested in some oil and gas royalty interests with his father, Wiley Fairchild, and they were down and wanted to talk about the relationship of one to the other.

Q. Okay. Looking into that?

A. Yes.

Q. And what if anything did they want to do at that point?

A. They wanted to record my statement, questions and answers if I would permit them to do it.

Q. Did you agree to do so?

A. Yes.

Q. Did you hesitate, call a lawyer, just say fine?

A. Of course not.

Q. Did you agree to the taping?

A. Yes.

Q. Say a taping, putting on a recording, putting on a recorder right in your presence, right?

A. Yes.

Q. You knew they were taping it?

A. Certainly.

Q. You gave them permission?

A. Yes.

Q. Why did you give them permission?

A. Well, why not, I had nothing to hide.

Q. And then approximately the next hour did they ask you questions and you answered them under -- excuse me, with them being taped for posterity?

A. Yes.

MR. FAWER: Your Honor, at this time we would play that entire tape. It would take approximately an h know Your Honor has to break at 4:30. I think it agreed would be not be good to split it up. If we could, we wo break it at this time and begin first thing in the morni the playing of the tape of that interview.

THE COURT: All right. We'll recess until nin o'clock in the morning.

(Recess.)

(End of Volume 14.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA

V. CRIMINAL ACTION NO. H85-00012(L)

WALTER L. NIXON, JR.

BEFORE: The Honorable James Meredith
Senior United States District Judge

DATE: February 6, 1986

PLACE: Hattiesburg, Mississippi

VOLUME 15

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THE COURT: Proceed.

MR. FAWER: Thank you, Your Honor. Good morning.

MR. FAWER:

Q. I just want to pick up before we come to the listening of the tape, I want to ask you one or two questions that I may have omitted to ask you yesterday. First, with respect to in each year, are there hunting seasons in each year?

A. Yes.

Q. Turkey hunting season, when generally is it in each year?

A. Usually from the latter part of March through May 1st with one day of closed season break it. Call it 2 seasons.

Q. So basically it's April in the month of April would be hunting season each year?

A. That's correct.

Q. For the last as long as you were a federal judge have you for the most part been hunting every -- turkey hunting?

A. I think so.

Q. And have you been to Larry Crowe's turkey hunting?

A. Yes.

Q. And where is Larry Crowe's?

A. It's in Eagle Lake in Warren County, Mississippi not too far in Vicksburg close to Issaquena and Sharkey County.

Q. Altogether how many times do you think you've been to Larr Crowe's?

A. I would say approximately four or five times probably.

Q. Have you ever been there hunting and with Bud Holmes or have you seen him there?

A. I've never gone hunting up there with him to my recollection except possibly one time dove hunting. I don't know whether we went together. I have seen him there on a couple of occasions yes, when he would come up there I believe usually to fish but I was either leaving or arrive after he did. He'd usually come with other people and I was with my friend or two when I went up there.

Q. Is this a location or an area hunting preserve that many people use?

A. It's not a hunting preserve but it's an area which is well hunted and most of it is privately owned or leased by various hunting -- I say organizations, group of hunters.

Q. Was there ever a time when you were up there where you asked Bud Holmes or where you had killed a turkey and asked him to take it back and hold it for you?

A. Yes.

Q. Do you recall what year that was?

A. No, I don't, but it was a few years ago.

Q. Does that event have anything to do with your being at the farm the night in question about what you've testified yesterday?

A. No.

Q. One other question with respect to Bud Holmes or this matter, the events of around March of 1983. Did you ever officially or unofficially seek to influence anybody with respect to the Drew Fairchild case?

A. I did not.

Q. And was that your position at the time you were interviewed and taped by the federal Government on April 19th and is that your position today?

A. Yes.

Q. Coming then to the tape recording, as I understand it, we had set the background yesterday just before we broke in that Mr. Weingarten and Ken Whitespunner the agent from the FBI had come to your office the most general terms as I understand it told you what they were looking into; is that correct?

A. Yes.

Q. And asked permission for you to be able to tape an interview with you, correct?

A. Correct.

Q. Just so we have in mind, it was the Drew Fairchild case and your oil and gas, excuse me, and your investment with Wiley Fairchild in the oil and gas venture; is that correct?

A. Yes.

Q. And that was what you were told as the interview began?

A. Yes.

MR. FAWER: Your Honor, at this time may we pass out copies of the transcript of this tape to help the jury in following it as we go along. It's quite audible, but I think useful to be in their possession. Would that be satisfactory? Judge, do you want a copy?

(Tape played.)

MR. FAWER: Your Honor, well mark this as Defendant's Exhibit 43 in evidence, the tape recording that is.

We would mark a copy of the transcript as 43-A, Your Honor.

THE COURT: May be received.

(Exhibit No. D-43 marked).

(Exhibit No. D-43-A marked).

MR. FAWER: Could we just collect the copies of that transcript from the jury?

(Copies collected.)

BY MR. FAWER:

Q. Judge Nixon, that interview took approximately one hour, is that correct?

A. Correct.

Q. And the gentlemen then left your office, is that correct?

A. Yes.

Q. When they walked ought, you had not known they were coming there except for the call from Kennedy, is that right?

A. Yes.

Q. You didn't know the subject matter until they told you, until Reid Weingarten mentioned the name Drew Fairchild and its connection to the oil and gas deal before he put on the tape, correct?

A. Yes, he mentioned the name Redditt Fairchild.

Q. Explained who Redditt was?

A. Yes.

Q. What was your state of mind when they left that office that day?

A. To say the less, I was puzzled, confused, and very mad, angry.

Q. What were you angry about?

A. I was angry some so-called confidential informant apparently had tried to say there was some connection between Drew Fairchild's drug case and the oil and gas transaction I had with Wiley Fairchild, without any foundation, without any truth to it.

Q. You had never heard of Skip Jarvis at that point?

A. No.

Q. You didn't know about his connection with the government at that point, did you?

A. No.

Q. You didn't know he had tampered with the division orders where he put, intentionally put your middle initial down as C instead of L?

A. Correct.

Q. You had to learn that in this courtroom?

A. Yes, first time.

Q. What did you do after sitting there, they walked out of the office, did you do anything after they left?

A. Yes, I did.

Q. What did you do?

A. I called my best friend, my wife.

Q. Okay. Why?

A. I wanted to share it with her, tell her what had happened, and tell her how puzzled I was, I guess express to her my frustration and my anger about it.

Q. Did you go into a great deal of detail with her?

A. No, not at that time. I told her I'd talk more about it when I got home.

Q. It was late in the afternoon?

A. Yes.

Q. It had ended about quarter to five, went from 3:40 to 4:4[illegible]. After you spoke to Barbara, who else do you recall calling?

A. I recall calling during that day or night both Carroll Ingram, George Phillips and Bud Holmes.

Q. Okay. Why did you call them? First let's talk -- do you recall who you called first?

A. No, I don't.

Q. Do you recall what you said to them? Were you asking, was the questions or the subject of the conversation the same in all three, as to all three conversations?

A. Pretty much so.

Q. What was it you were telling to them, saying to them, tell us about it?

A. I told them basically and briefly what had happened. I asked them if they knew anything about it and what information they could give to me about what was going on, what it was all about, if they knew.

Q. Carroll Ingram, did you at all discuss with him or did you mention to him the backdating question that Reid Weingarten has raised?

A. I talked to him about that.

Q. Was he able to inform you, elaborate on it, give any explanation?

A. Carroll reminded me about what had actually happened, and I recalled it.

Q. Okay. Aside, aside from the discussion, the backdating, what if anything -- did you speak to -- backdating with Ingram, why did you call George Phillips?

A. George was United States Attorney, and of course I knew him well, were good friends, I worked with him. I thought perhaps he could tell me something about what was going on. It was the Department of Justice matter, and he's their representative in the Southern District of Mississippi as United States Attorney, works for them.

Q. What was his response?

A. He said he didn't know a thing about it. This was the first he knew about it.

Q. Did you speak to Bud Holmes?

A. Yes.

Q. Tell us what you said to him?

A. I told him basically what had happened. I asked him what was going on with reference to the matter, what they had alleged. I knew nothing about the matter, and he responded he didn't know anything about the investigation, first he had heard about it.

Q. That was my question. Had he had anybody approach him at that point from the federal government?

A. He said not.

Q. In that conversation with Bud Holmes, was there any discussion whatsoever about the telephone call that you've heard testified about here today --

A. No.

Q. -- in this courtroom?

A. No.

Q. Did you ever ask him to check with anyone whether that telephone call to Wiley Fairchild back in 1983 had been taped?

A. No.

Q. That evening, did that basically, was that basically your conversation with Bud Holmes?

A. Yes.

Q. What you just told us? That evening when you went home, did you further discuss it with your wife?

A. Yes, I did.

Q. At the time of this interview, at the time you were on the phone with Ingram, Phillips, Holmes, was the telephone call anything that you even thought of at that point in time?

A. No.

Q. Did it have any connection to what you understood they were focusing in on?

A. No, it didn't.

Q. The following day did you make a call to the FBI?

A. Yes.

Q. Who did you call?

A. I called Weldon Kennedy, the head of the FBI in Mississippi, the chief, agent in charge.

Q. Was he the one who first called you the day before to set up that interview?

A. Yes.

Q. Why did you call him?

A. I called him to tell him I had found the documents, copies of them they wanted, he could send Agent Whitespunner, anyone to get them at my house on Saturday, and I had found copies at the house that I didn't even know I had, wasn't necessary to get them back from the bank. I had given copies to the bank also in connection with some matters. I also asked him what was going on. He in effect said well, it was just sort of a perfunctory investigation at the time, he didn't know much more about it.

Q. Okay. Just so the jury understands, at the interview the day before, you thought the copy was with a banker of yours?

A. Yes, I told Mr. Weingarten and Mr. Whitespunner that, either before or after the recording, during the interview -- see, there was a few things said before the recording, introduced themselves.

Q. You saying after it was over there was some discussion about your going and finding the documents if you could?

A. Yes.

Q. In any event, you did find at home the documents which have now been introduced in this trial, correct?

A. That's correct.

Q. I believe it's Defendant's Exhibit -- I believe it's 19, the notes, are those the documents that you found?

A. Yes.

Q. And the checks, did you turn over the checks at that time in payment of the notes or just the notes themselves?

A. Just copies.

Q. Copies?

A. Of the instruments and notes.

Q. Of the notes?

A. Of the conveyances and the notes.

Q. And did you have copies or the deeds as well?

A. Yes, conveyances of deeds.

Q. The conveyances or assignments, the three copies, all or which were dated February 25, 1980?

A. Yes.

Q. That's what you turned over the following day?

A. Yes.

Q. To whom?

A. To Mr. Whitespunner.

Q. Was there any discussion with him at all on that day about anything?

A. Just briefly about the situation, about --

Q. What was it?

A. Well, he asked me again about what was the unorthodox part of it.

Q. What did you explain?

A. I told him the unorthodox part actually was when the transaction had actually taken place and the date that was on the deeds, also the, that is February, 1980 when we actually, the instruments were signed, the first part of 1981, and also the fact that there was a delay, such a long delay in any royalty payments coming after apparently production began.

Q. Okay. And that was your recollection at that time?

A. Yes.

Q. That's the sum and substance of it?

A. Yes.

Q. It has been testified to here by Bud Holmes, and it's not a question that he was interviewed by the FBI or Department of Justice on April 25th of that same year, I guess it was some six days after you were interviewed, okay?

A. All right.

Q. Did you make any effort to contact him at that time, either before or after, to in any way discuss what had been asked of him by the Department of Justice or the FBI?

A. No.

Q. Carroll Ingram was interviewed on or about May 10th by the Department of Justice and the FBI. Did you make any inquiry of him before or after, what he was about to say or what he in fact was questioned about?

A. No.

Q. Did there come a time in 1984 when you learned from some source that there was to be a grand jury convened concerning this subject?

A. Yes.

Q. When do you recall learning that?

A. It was I think somewhere in the middle of 1984.

Q. When you say the middle, when was the grand jury convened?

A. July.

Q. So when did you learn of it being, what's your best understanding or recollection of it being convened? When there was some publicity about it?

A. It was a few weeks before that. I read a lot of -- the news media were covering it, reporting things about it.

Q. Is that where you basically were getting your information from?

A. Yes.

Q. When that occurred, had you made up your own mind or come to any conclusion, when you learned there was a grand jury, had you made any decision as to whether you wanted to appear before that grand jury or whether you would appear if subpoenaed?

A. Yes, I wanted to.

Q. Okay. Did you retain the services of an attorney?

A. Yes.

Q. Who was that attorney?

A. Bill Goodman of Jackson.

Q. Is Bill Goodman a criminal attorney?

A. No.

Q. What is his background?

A. He is with the firm of Watkins -- senior partner in the firm of Watkins and Eager, a very respected firm, did a lot of business law.

Q. Why didn't you retain a criminal attorney?

A. Because I can't conceive that there was any need to. I had done nothing wrong, and I didn't conceive that things would go in this direction.

Q. Okay. Did you ask, did he become your representative in terms of contacting the people at the Department of Justice who were running the grand jury?

A. Yes.

Q. Did you ask him to pass on to them your request to appear before the grand jury?

A. Yes, I did.

Q. And did he do so?

A. Yes.

Q. And were you told or did he tell you that you would be permitted to appear?

A. Yes.

Q. And did you appear?

A. Yes.

Q. When was that?

A. July of 1984.

Q. Okay. At the time you were, the time -- when in July, do you remember?

A. 20 something I think of July. I'm not sure of the exact date.

Q. We have the transcript.

A. Whatever date.

Q. July 18th?

A. 18th.

Q. At the time were you, were you at that week in Biloxi on business, holding court, where were you?

A. No, I was with my family in Destin, Florida for our two week vacation.

Q. That's the vacation you normally take?

A. Yes.

Q. Did you come back for your appearance before the grand jury?

A. Yes, I did.

Q. Had you ever been before a grand jury before?

A. No.

Q. Had you ever been a witness in any proceeding before?

A. No.

MR. FAWER: At this time, Your Honor, I would like to play, submit to the grand jury a transcript of the -- excuse me, to this jury a transcript of that grand jury and to play the grand jury proceeding to them. Your Honor, the quality, I think there is a little different quality on this tape. My recollection is that the beginning of it is a little bit, the audibility is not very good at the beginning, but that's really in the point where there is just advising him of his rights. It is not as clear as the other, but we'll try to see how it works.

(At the bench, not reported.)

THE COURT: We'll take a short recess.

(Recess.)

MR. FAWER: Judge, if I might just mention that obviously the taping of it in the grand jury was a different location than the judge's office. We have tried while the jury was out tried to modulate. It's not a clear taping. I guess the size of the room, the size the room, the grand jury room itself. There might be necessary as we get into it to try to, you know, readjust. Hopefully, we won't have to. Quite candidly, my recollection not as good a tape but with the transcript there's no problem. We have done the best we can. This is the grand jury appearance of Judge Nixon on July 18th, 1984.

(Tape played).

MR. FAWER: Your Honor, we will offer this as the next Defendant's exhibit.

THE COURT: May be received. What number?

THE CLERK: 44.

(Exhibit D-44 marked.)

MR. FAWER: 44, Your Honor. And we would make the transcript 44-A.

MS. LITTLE: I think it's already in.

MR. FAWER: I'm sorry. I'm told the transcript is already in. Judge, we have some more testimony. Do you want to take a break now, or does the Court --

THE COURT: You indicated you didn't have very much more.

MR. FAWER: About half an hour.

THE COURT: Let's recess until one-thirty.

(End of Volume 14.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA

V. CRIMINAL ACTION NO. H85-00012(L)

WALTER L. NIXON, JR.

BEFORE: The Honorable James Meredith
Senior United States District Judge

DATE: February 6, 1986

PLACE: Hattiesburg, Mississippi

VOLUME 16

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MR. FAWER: May I proceed, Your Honor?

THE COURT: Yes.

MR. FAWER:

Q. You've just listened Judge Nixon, you've just listened to the tape of the grand jury inquiry of you on July 18th of 1984. First, in your mind when that was going on and as you left that grand jury while it was going on, what did you understand from your point of view was the thrust of the grand jury's inquiry or the Government's inquiry in the grand jury?

A. Well, the focus of it was whether there was any link or connection between the oil and gas transaction that I had entered into with Mr. Wiley Fairchild and the Drew Fairchild drug case.

Q. Had that been the same focus as the interview of yours in April?

A. Yes.

Q. When you were in the grand jury at any time while you were in the grand jury, were you ever asked about that evening in question that you described here or about the telephone call to Wiley Fairchild?

A. No.

Q. While you were in there, did you in fact were you aware of the fact that there had been a discussion between you, excuse me, there was a meeting where you were over at Wiley's office and then you had been at Bud's farm that evening and the phone call. Were you aware of that when you were in the grand jury?

A. Yes.

Q. Let me look at the indictment for a moment. I want to direct your attention to it and I have it in front of me and according to the indictment and according to the grand jury transcript you were asked the following. Question. Did Wile Fairchild ever discuss the case with you. Your response. No, not to the best of my recollection. I think I'd recall that he had, but I don't recall that he ever did. Did Wiley Fairchild ever discuss the Drew Fairchild case with you?

A. No.

Q. Were you telling the truth when you gave that answer to th grand jury?

A. Yes.

Q. You've testified about a meeting in his office. Do you recall?

A. Yes.

Q. At that time did you ever discuss the Wiley Fairchild, excuse me, the Drew Fairchild case with Wiley?

A. No. All he did was make a complaint to me about blackmai publicity. Dragging of the Fairchild name through the mud in the news media.

Q. Once again, was there any discussion brief or long about the case in his office on that occasion?

A. No.

Q. In the indictment you were asked. Did Wiley Fairchild ever ask you to do anything visa ve his son's case. Your answer. Absolutely not. Were you telling the truth at that time?
A. Yes.
Q. At any time including that day in his office did Wiley Fairchild ever ask you to do anything about his son's case?
A. No.
Q. You told us that at that time Wiley didn't ask you that, you had an impression that he wanted you to mention something to Bud; am I correct?
A. Yes.
Q. Tell the jury again what is it you understood or felt he wanted you to mention to Bud Holmes.
A. The fact that he felt he was being blackmailed and that his good name was being drug through the news media.
Q. Was there any request of you, did he ask you to do anything about his son's case on that occasion?
A. No, he did not.
Q. Looking at the next count. Count 3, you were asked. The grand jury has heard evidence the state prosecutor who eventually handled the case was an individual named Bud Holmes. Is he a friend of mine, very good friend, long time friend, yes. Question. Did he ever discuss the Drew Fairchild case with you. Answer. No, not to the best of my recollection. I think I would recall if he had. Were you telling the truth

giving that answer?

A. Yes.

Q. You've told us of a meeting at the farm that night, correct?

A. Yes.

Q. Did you ever discuss the Drew Fairchild case with him at that time?

A. No.

Q. What did you tell him?

A. He wanted to tell me about the case and I told him I didn't want to hear about it. I just passed onto him the complaint of Mr. Fairchild that he was being blackmailed by Bud Holmes.

Q. By the way, I haven't heard anybody testify to the contrary, but you tell this jury any time after that evening did Wiley Fairchild ever mention that subject of the blackmail, the publicity to you at any time thereafter?

A. No, he didn't.

Q. When you were having that discussion, when you went to Bud that night to pick up the records, you had a drink and making phone calls and you described your talk with him that night, did you have any knowledge whatsoever that Bud Holmes had indicted Drew Fairchild in part in order to help Bill Porter collect a legal fee?

A. No, I didn't.

Q. When did you first learn of that?

A. When I heard it here in the witness box from Bud Holmes during this courtroom.

Q. Let me move on to Count 4 which is the last count of the indictment. You were asked there as a final question was there anything you wanted to add and you made a statement in it and I'm reading just those portions of the indictment which have been underlined and are according to the Government false. I want to read that portion to you. First the introductory paragraph and included in it is that portion. And I want to say this that I've been told and led to believe and read in the newspapers and heard on the news media so much about this investigation of the Drew Fairchild criminal case. Now I have nothing whatsoever officially or unofficially to do with the Drew Fairchild criminal case in federal or state court. I've never talked to anyone about the case any federal judges, state judge, federal prosecutor, state prosecutor and I never handled any aspect of this case in federal court. Then you go onto say. As you know, Judge Cox handled it. I don't know whether someone told me maybe Judge Russell had it, maybe one of the defendants, but I never handled any part of it, never had a thing to do with it at all and never talked to any state or federal prosecutor or in any way influenced anybody with respect to this case. That's the statement you made to the grand jury. Were you telling the truth?

A. Yes.

Q. Did you ever at any time as you sit on this stand do a thing to influence the outcome of the Drew Fairchild criminal case?

A. No.

Q. Have you heard anybody in this courtroom claim that you had?

A. No, I haven't.

Q. Judge Nixon, when you went to that grand jury you testified took up approximately two hours of time interrogation by 2 attorneys as I recall. Mr. Weingarten and another attorney I think name was Richter is that correct?

A. Yes.

Q. And the grand jury was present?

A. Yes.

Q. In excess of 20 citizens of the community, right?

A. Correct.

Q. Did you at any time intend to lie before that grand jury?

A. Absolutely not.

Q. Let me ask you one more question. Maybe it's not in issue but I want to ask it anyway.

A. I did not lie.

Q. I want to ask you another question. You told us that you went to that grand jury or when you were at the grand jury you were aware that you had seen Wiley on a night several years before or I should say an afternoon that you were at the farm and passed on the blackmail complaint of Wiley's to Bud Holmes, right?

A. Right.

Q. And that Bud then made a phone call to Wiley which surprised you but it did occur, correct?

A. Yes.

Q. And you're in the grand jury. Were you aware at that time did you remember those events?

A. Yes.

Q. Why then -- I understand you weren't asked the questions, but I want to go a step further. Why didn't you volunteer the information to the grand jury? Just volunteer it as an extra tidbit for them?

A. All right. The focus of the entire investigation, the interview with me by Mr. Weingarten and Mr. Whitespunner, all of the news media publicity, my conversations with Bill Goodman, my attorney, all showed that the focus of the investigation was whether there was any link or connection between the Drew Fairchild drug case and my oil and gas transaction with Wiley Fairchild. Bill Goodman and I spent many hours together.

Q. That's your attorney?

A. Yes.

Q. Go ahead.

A. With reference to that matter, with reference to the impending grand jury investigation. We discussed it. He's a good lawyer, he advised me as any good lawyer would advise his client to listen to the questions and answer the questions, to be responsive to them, and I did.

Q. Had you ever been a witness before in a grand jury?

A. That was the first time I'd ever been a witness.

Q. In any proceeding?

A. In any proceeding.

Q. Did you follow or try to follow his advice in the grand jury?

A. Yes, I did.

Q. When you went in that grand jury what in fact was the focus of the inquiry?

A. The focus was the Drew Fairchild drug case and the oil and gas transaction that I had with Wiley Fairchild and whether there was any connection or link between the two.

Q. And was there?

A. Absolutely not.

Q. Were you intent on making that clear to that grand jury?

A. Yes.

Q. To move on from that point in time. You left the grand jury and did you return to your family?

A. Yes, I did.

Q. Down on the Coast at the time, right on the Florida Coast?

A. Yes.

Q. In that same day or I guess two days later, Bud Holmes went to the grand jury on July 20th. Did you ever discuss his grand jury testimony with him?

A. No.

Q. Did you ever ask him what was asked of him or anything to do with it?

A. No.

Q. Let me just, at this point in August of 19 -- there's been some testimony that there came a point when you were notified -- let me withdraw that and ask the question a different way. There initially or at least by the time the notes had been paid off, as I understand it, you thought that you already had paid all the interest from February of 80 through the date that you paid the notes off, is that correct?

A. Yes.

Q. There came a point, did there not, when you were notified by the Fairchild -- by somebody in the Fairchild organization that they had not calculated the additional interest and you were sent a request for it, is that right?

A. Correct.

Q. Do you recall approximately when that was?

A. It was after my grand jury experience.

Q. Had you had any discussion with Wiley Fairchild about this subject?

A. No.

Q. Or any of his representatives, anything like that?

A. No, I didn't.

Q. Did the request come out of the blue?

A. Yes.

Q. Did you look at the numbers, have them calculated and send a check in payment?

A. Yes.

Q. I show you what's already been marked in evidence as Defendant's Exhibit 24. Is that the letter, the cover letter you sent back, the copy of the cover letter you sent back together with your check in the amount of $951.10?

A. Yes, it is.

Q. Thank you very much. Okay. In September of -- I take it these events that I am discussing with you, I'm talking about appearances of individuals before the grand jury. That grand jury met in this building, am I correct?

A. Yes.

Q. Is it fair to say that, every event or every move of that grand jury to the extent possible was reported in the press, is that correct?

A. Appeared to be that way.

Q. And the press -- be taht the press on the coast or up in Jackson or the local press in Hattiesburg?

A. Yes.

Q. Okay. In September -- Bud Holmes went back to the grand jury on September 5th. Did you have any discussions with him before or after concerning his proposed grand jury appearance or what had been asked of him in that grand jury?

A. No.

Q. Did you seek him out in any way?

A. No.

Q. In November, Wiley Fairchild, excuse me. In September Wiley Fairchild was indicted. You were aware of that, were you not?

A. Yes.

Q. And in November he entered a plea, did he not?

A. Yes.

Q. That received a great deal of publicity?

A. It did.

Q. Did you at that time have any discussions with anyone, Bud Holmes, Wiley Fairchild, anyone about the events or about the implications of Wiley pleading guilty?

A. No.

Q. Did you have any discussions with Carroll Ingram?

A. No.

Q. On February -- by the way, was there a fair amount of publicity about -- let me just ask you. In the end of 1984, was there a fair amount of publicity and speculation about Carroll Ingram's position vis a vis the Department of Justice?

A. Yes.

Q. Did you make any effort to talk to him about it?

A. No.

Q. Where were you on February 15th of 1985?

A. Holding court here in Hattiesburg.

Q. This courtroom? The other courtroom?

A. The other courtroom.

Q. Okay. What day of the week was it?

A. I'm not sure. I think it was -- I don't know what day February 15th was.

Q. Okay.

A. During the week though, weekday.

Q. Weekday. Did you have a, let me direct your attention to the evening hours. Did there come a time you had received a call from Bud Holmes?

A. Yes, when my jury went out to deliberate in this products liability case, civil case, my secretary told me that Bud Holmes had called and wanted me to call him, return his call.

Q. When you had the jury out and had some free time, were off the bench, did you make such a call?

A. Yes.

Q. Where did you reach him?

A. At his office.

Q. What if anything did he say to you?

A. He said that it was very important, he had to talk to me about something right away. I told him I had a jury out, to come on up here. He said no, the lawyers around here would rather not come up at all. He asked me if I could meet him downstairs.

Q. Downstairs being where?

A. Where I park my automobile.

Q. Did he suggest that?

A. Yes.

Q. Did you agree to do so?

A. Yes.

Q. How long did it take before you met?

A. Oh, I'd say ten or fifteen minutes.

Q. This is in mid-February of 1985?

A. Yes.

Q. It's dark?

A. Yes.

Q. Okay. The jury is out, you're downstairs with Bud -- are you in the car?

A. Yes.

Q. Sitting in a car?

A. Yes.

Q. Tell us what --

A. My car.

Q. Your car?

A. Yes.

Q. Sitting in the front seat of the car?

A. Yes.

Q. Tell us what he says to you on that occasion and what you say to him?

A. He said he had testified before the grand jury that he had not talked to Wiley Fairchild about his son's case, and that Carroll Ingram told him that he had told the Department of Justice that he had acknowledged to him that he had.

Q. Let's get this a little -- I want to get that clear. The first statement concerned, was Bud telling you what he had already testified previously to the grand jury?

A. Yes.

Q. Let's hear it again. I want to make sure the jury understands the sequence.

A. All right. He said that he had testified before the grand jury that he had not talked to Wiley Fairchild about Drew Fairchild's case.

Q. Okay. Then he told you something about Carroll Ingram?

A. He told me, Carroll Ingram told him that he, Carroll Ingram, had told the Department of Justice that Bud Holmes had acknowledged to him that he had made a phone call to Wiley Fairchild and talked to him about the case, and that he was afraid that he was going to be indicted for perjury.

Q. Okay. Did he make, what else did he say?

A. He suggested that there was no phone call made.

Q. Did you ever suggest that?

A. Absolutely not.

Q. Go ahead. What did you did he say?

A. What did he say?

Q. Did he say anything else at that time?

A. No. I told him, I said Bud, you made that telephone call from your farm that night, there wasn't a thing wrong with it, I don't know what you said on the phone, but as far as I'm concerned there was nothing wrong with the phone call, nothing wrong in it at all, and better tell the grand jury the truth, because if I'm asked about it I'm certainly going to.

Q. What did he say, if anything?

A. He said, I don't know what I'm going to do.

Q. Did that end the meeting?

A. Yes, he was quite upset.

Q. Had you ever seen him in that state before?

A. Not like that, no.

Q. He had mentioned to you, apparently he had just spoken to Carroll, at some point shortly before this he had spoken to Carroll?

A. That's right.

Q. Were you aware of the fact that between that date, let me interrupt. You went up, finished up your business upstairs then?

A. Yes, the jury came in with a verdict some good while later.

Q. Okay.

A. I think close to midnight if I'm not mistaken.

Q. Did you, were you aware, until you heard it in this courtroom, that he had, or preparing for this trial, that after speaking to you and after that weekend that he went back to talk to Carroll Ingram again?

A. I didn't understand your question.

Q. Were you aware until you learned it shortly before this trial that after talking to you on February 15th, within a few days after he had gone back and talked again with Carroll Ingram?

A. No.

Q. You do know, however, he did go to the grand jury on February 21st?

A. Yes, that was reported in the newspaper.

Q. Okay.

A. And on TV I think.

Q. By the way, at that time did you have any awareness that in any way that not only had Bud talked to Wiley Fairchild that night from his farm, were you aware of the fact that he and Dickie McKenzie had gone to Wiley Fairchild in December of 83 and discussed the Drew Fairchild case?

A. No.

Q. Were you aware of the fact that he had telephoned Wiley Fairchild the day after he had indicted Drew, telling him to get Drew up to his office so he could make bond?

A. No.

Q. So there were three instances that you now know in which he, Bud, had discussed the case in some way with Wiley Fairchild?

A. Yes.

Q. It was Bud who told you that he had already told the gran jury he had not done so, correct?

A. Correct.

Q. From February I take it, you told us that Bud went to the grand jury on February 21st. Aside from his coming to see yo that night on February 15th, after he went to the grand jury -- first, before. Any more contact before he went to the grand jury?

A. No.

Q. No discussions with him?

A. No.

Q. When he comes out of the grand jury, did you talk to him, try to find out what was asked of him, any further conversations?

A. No.

Q. On March 29th of 1985, Bud Holmes was indicted, am I correct?

A. Yes.

Q. Did you have any contact with him? Did you try -- did yo make any concerted effort in fact not to be seen, not to be seen, but not to discuss the case with Wiley Fairchild or Bud Holmes or any of these people?

A. Yes.

Q. At whose request or direction?

A. My attorney, Bill Goodman.

Q. Okay. Let's turn to mid-April, about April 12th, 1985. You have a friend or someone who is named Sam Peterson?

A. Yes.

Q. Who is Sam?

A. He's retired chief deputy marshal, deputy United States Marshal for the Southern District of Mississippi.

Q. He's now retired?

A. Now retired.

Q. Had he just retired?

A. He retired in April of last year, 1985.

Q. There was a party held?

A. Yes.

Q. Were you to be one of the speakers at the dias?

A. Yes.

Q. Was there a cocktail hour before it?

A. Yes.

Q. Where was it held?

A. It was at the Broadwater Country Club I think they call it, the Broadwater golf course, what have you, on the coast in

Biloxi.

Q. Lots of people there?

A. Yes.

Q. Tell us what occurred there. Did Bud Holmes show up there?

A. Yes, he did.

Q. First of all, point -- give us the scene, tell us what happened.

A. Barbara and I were there, many other people, many other couples. The party was in full bloom.

Q. This is about, what, if I understand correctly, only twelve days after Bud's been indicted?

A. It was April 12th is when the party was.

Q. Bud was indicted on the 29th, so I guess it's 14 day later. Go ahead.

A. Bud came in, and after he was there a while, I was standing in the middle of the floor talking to somebody, I forget.

Q. Were you surprised to see him there?

A. Yes, I was. He had just been indicted recently by the grand jury. I was very surprised.

Q. Surprised he was down at the party?

A. Yes. He walked up to me in the middle of the floor, and whoever I was talking to said something to him, small talk, and then walked off. And he told me, he said to me, Bud did, he said -- let me see if I can recall exactly what his words were. I don't think I'll ever forget them. He said, you know with reference to that phone call in question, he said you said I made the phone call; I don't remember making it, I was drunk. Said I was drunk and you were sober, and before anything else could be said, someone else walked up and that was the end of it.

Q. Nothing else about it?

A. Thank goodness.

Q. Was that the end of it?

A. Yes.

Q. Were you, did you want to discuss this matter with him at that time?

A. No.

Q. Did you seek him out?

A. No.

Q. Was this a crowded, room full of people, all of whom were aware of the publicity basically?

A. Yes.

Q. Have you seen him again until you saw him in this courtroom?

A. No.

Q. Bud Holmes, according to the record, plea guilty on the eve of his own trial, day of his own trial in June of 1985, and for the fourth time went to the grand jury and testified on June, I think it was June 18th or June 28th of 1985. You're aware of that now?

A. Yes.

Q. When did you first learn what he told the grand jury after pleading guilty, after entering into his plea agreement and going before that grand jury in June of 1985? When did you first learn of what he had told them?

A. About four weeks ago when the transcript of his grand jury testimony, by virtue of the order of this court, was turned over to my attorneys who turned it over to me. Transcript of his testimony at that last grand jury appearance.

Q. And when you, did you take that grand jury transcript and read it?

A. Yes.

Q. What was your reaction?

A. Barbara read it, I read it. And my reaction was, I was just completely shocked, I was disappointed, I was angry, and very sad.

Q. You were indicted in the last two days of August of 1985, am I correct?

A. Yes.

Q. Prior to that, you had gone to the grand jury in July of 1984, right?

A. Yes.

Q. You had volunteered and gone there, correct?

A. That's correct.

Q. Bud had gone, Bud Holmes had gone a day or so later?

A. Yes, I think he was subpoenaed.

Q. Wiley Fairchild had gone same period of time?

A. Yes.

Q. Carroll Ingram had gone, all in that three day period, July 18th, 19th and 20th, all four of you were before the grand jury?

A. I think that's correct.

Q. Bud was back to the grand jury in September he was subpoenaed back, in February of 85, and again in June of 85, right?

A. Yes.

Q. Carroll Ingram went back in February of 85 and Wiley Fairchild in November of 84, right?

A. Yes.

Q. You had occasion in the course of the order of the Court, the discovery order in which these grand jury transcripts were made available to you, were each -- first of all, was anybody questioned about the telephone call or the events of that day in question, talking about the day when you go to the farm, you understand what I'm referring to?

A. Yes.

Q. Was anyone questioned about that by the government in the July 18, 19, and 20 grand jury?

A. No.

Q. Was Wiley Fairchild confronted specifically, however, with the questions about the events of that day when he went back in November of 1984?

A. Yes.

MR. WEINGARTEN: I object. I think it's inappropriate for him to review what's gone on in the grand jury.

MR. FAWER: It's not inappropriate. It's what he's seen in the record.

MR. WEINGARTEN: For him to review it from the record is inappropriate.

THE COURT: I'll sustain the objection.

BY MR. FAWER:

Q. Single question. Were you ever asked or subpoenaed to come back to the grand jury and asked under oath a single question about the events of that day and that evening?

A. No.

Q. Judge Nixon, you're charged in four counts of an indictment, count of accepting an illegal gratuity and three counts of perjury. Are you guilty of any of those four charges?

A. No.

MR. FAWER: Just indulge me a moment, Your Honor.

(Pause.)

Answer the man's questions.

CROSS-EXAMINATION

BY MR. WEINGARTEN:

Q. Good afternoon, Judge Nixon. Judge, you answered a number of questions about your financial situation and I'd like to touch upon that just briefly. What does a judge make now? What's his salary?

MR. FAWER: Excuse me a second, so we can start off on the right foot. I would object to what the Judge makes on February 6, 1986.

THE COURT: He testified about it on direct.

MR. FAWER: Today? Never. Excuse me, never, Judge, with all due respect. I asked him his salary when he began in 1968, and 1980 was the only other question, went from 42 to 54, it's a matter of public record, it's not that; I think if we're going to ask questions that are germane, if it's a matter crucial in terms of today, fine, but --

THE COURT: Overrule the objection. Proceed.

THE WITNESS: 76 thousand dollars.

BY MR. WEINGARTEN:

Q. Has it changed over the years?

A. It's changed very little, very little.

Q. Can you remember in 79 how much it was?

A. In 79.

Q. Roughly?

A. I think approximately 54 thousand dollars.

Q. So each year there have been small incremental increases?

A. I don't know about each year. I don't think it increased each year.

Q. Okay. I think you testified that basically until 1979 you neglected your personal finances, and then got very interested in personal finances about that time?

A. Yes.

Q. Is that fair?

A. Yes.

Q. You became interested in making investments?

A. Correct.

Q. And I recall a statement you made in the interview of April, 1984, you said I am, was and still am in dire need of supplemental income to supplement my judicial salary, is that right?

A. Yes.

Q. Do you recall making that statement?

A. I think I did. I read it, heard it.

Q. Was that true?

A. Yes.

Q. Did you tell Wiley Fairchild that?

A. I don't know that I told him in those terms, but I told him I was interested and wanted to supplement my income, yes, and I told him.

Q. You told other friends that?

A. Yes.

Q. Including lawyers?

A. Yes.

Q. Including --

A. Friends of mine.

Q. Excuse me?

A. Yes.

Q. Including lawyers who sometimes appear before you?

A. Yes.

Q. And was that statement true that you are or was and still am in dire need when you approached Carroll Ingram for Wiley Fairchild?

A. Which question do you want me to answer?

Q. Were you in dire need of supplemental income in 1979?

A. Yes. I was in need, yes.

Q. And the situation continued when you sought more investments from Wiley, or were interested in more investments?

A. I didn't seek any more from him.

Q. All right, but you were interested in more investments, Wiley Fairchild discussed a possible second investment with you, that situation still applied?

A. Yes, that was in October of 1984 at the party, reception given for me as chief judge, he mentioned that there might be another that may be of interest, if there was he would get in touch with me, and asked me if I was interested in it after discussing it with me, I told him that would be fine, and I never heard any more from him about it.

Q. I think you said October 84. You meant October 82?

A. I'm sorry, October 82, certainly.

Q. Around October 82 what was your net worth, do you have any idea?

A. No.

Q. Let me show you your financial -- let me show you a financial statement marked Government Exhibit 27, which is dated December 31st, 1982?

A. All right.

Q. Have you ever seen that before?

A. I'm sure I have.

Q. Is your signature on it?

A. Yes.

Q. Was that prepared by your CPA?

A. Yes.

Q. And was the preparation so that statement could be submitted to banks for future business for you?

A. Yes.

Q. Are your total assets listed on the first working page of that document?

A. Yes.

Q. What were your total assets on December 31, 1982?

A. $860,224, which included my home which was valued at $322,500.

Q. Okay. Are your liabilities listed there as well?
A. Yes, they are.
Q. Could you give us that figure?
A. $136,336.92.
Q. And is your net worth listed?
A. $723,887.92 was net worth.
Q. And that was during the period of time when you say you were in dire need of supplemental income?
A. This was as of December 31, 1982.
Q. Didn't you say in your statement you were, was and still am in dire need of supplemental income to supplement your salary?
A. What statement was that?
Q. April 1984?
A. If I did it, that's what I said.
Q. Generally speaking, when you made, when you advised your friends that you were interested in supplementing your income, what response did you receive?
A. Well, it varied, of course.
Q. And did you receive favorable responses from lawyers?
A. Specifically who are you talking about?
Q. Just asking generally at this point.
A. When.
Q. At any point?
A. Well, I guess you might say Carroll Ingram. I don't know any other lawyers that I received favorable responses from that

I can think of, if you'll ask me specifically I'll be happy to answer you if I'm mistaken.

Q. All right I'm just asking generally now. We'll get the to specifics. Who did you approach? Do you recall?

A. I don't recall everyone, of course. I talked to friend of mine who was a banker in Biloxi. I talked to a friend of mine who was a banker in Natchez. I talked to a long time personal friend of mine who was in the seafood packing business in Biloxi. Perhaps 2 of them. And I, of course -- go ahead.

Q. And Ingram?

A. Yes.

Q. Any other lawyers?

A. It's possible. If you'll name them.

Q. Gene Wilkinson do you remember talking to him about that situation?

A. Yes.

Q. And did you wind up negotiating with a client of Gene Wilkinson about a possible business deal?

A. A client of Gene Wilkinson's?

Q. Yes.

A. I don't recall offhand. If you'll ask me specifically who I'll --

MR. FAWER: Excuse me. May we approach the bench?

(At the bench).

MR. FAWER: No, I want do this outside of the jury, Judge. You have a ruling -- there is a ruling of the court on the admissibility of this. Judge Nixon's not sitting there able to say to him you're not supposed to question me. He elicited the name Gene Wilkinson. I want to go outside the presence of the jury and deal with the scope of this cross because he obviously doesn't know where it begins and supposed to end. You made a ruling on this. It's inadmissible. This was the specific point. He's now saying he's not going into it. He just said that to me.

MR. WEINGARTEN: I want to get the general parameters of him talking to lawyers.

MR. FAWER: You asked the name.

MR. WEINGARTEN: I wanted to trigger a recollection that the conversation.

MR. FAWER: He's talking loud enough for that jury to hear it.

MR. WEINGARTEN: Your Honor, I'm telling you that was it. I was not going any further.

MR. FAWER: Is ask the name.

MR. WEINGARTEN: Why?

MR. FAWER: I object. Ask for a sanction from Your Honor for using it.

THE COURT: What's wrong if he doesn't get into specific --

MR. FAWER: Why is he using the name?

MR. WEINGARTEN: At this point it's nonprejudicial.

MR. FAWER: Why is he using the name? You tell me.

THE COURT: I don't have any idea.

MR. FAWER: I want to make a record of it. I don't want to do it we'll embarrass my client and the jury. I ask that we go back to chambers and deal with this.

THE COURT: Okay. I'll get the jury out.

MR. FAWER: Because the 404-B I don't want to do it in open court. The public doesn't know about the 404-B. That's a sealed record of this court.

THE COURT: When do you want to do it? At a recess?

MR. FAWER: No, I don't think we ought to do it at a recess. I want him told that he is not to go in without advance notice to you and me any name that has already been denied him permission if he's going to do it.

THE COURT: I'm not going to tell him that.

MR. WEINGARTEN: You don't have to tell me that.

THE COURT: We're not going to get into the specific instances.

MR. WEINGARTEN: That's fine.

(Open court).

MR. WEINGARTEN:

Q. Judge, is it fair to say that you're known to be a very forceful man? That's a fair statement?

A. By whom?

Q. By everyone who knows you or lawyers who appear before you.

A. What do you mean by forceful?

Q. Well, I mean you have a forceful personality. You take control of the situation. I'm not asking you to be modest here. Is that a fair statement?

A. I'm not trying to be modest. I don't know in what respect you're talking about. If you'd be more specific. I'm known to be a very reasonable person. I'm known to be I guess a pretty forceful -- you might say I run a tight ship in the courtroom.

Q. Are you known by lawyers to be an intimidating judge would you say?

A. By what lawyers?

Q. Have you heard is that scuttlebutt around Biloxi or in Mississippi?

A. No, I've never heard scuttlebutt around Biloxi that I've been intimidating. If I heard it would not be true. I am not intimidating.

Q. Now let's talk about --

A. Would you want to tell me who's made such a charge or allegation so I could maybe explain it to you?

Q. I'm not suggesting it's a charge or allegation. Perhaps judges should be intimidating perhaps judges should be forceful.

A. I don't think so. I think they can be reasonable and take care of business of the court and still be courteous to the

lawyers and I have tried to be and I don't think you would fin
that to be the case, Mr. Weingarten, no.

Q. Let's talk about the initial situation or the origination of the oil deal. It is fair to say a colleague of yours had a close relationship with an individual in Mississippi who owns a great number of oil interests?

A. A what of mine?

Q. A colleague?

A. Who are you talking about?

Q. Judge Russell?

A. Judge Russell?

Q. Yes.

A. Would you please repeat the question now that I know who you're talking about because I couldn't understand the questio in context.

Q. Is it fair to say that Judge Russell a colleague of yours had a substantial business relationship with a man named Biglane?

A. That's what I understand.

Q. And do you have personal knowledge of that from either Mr. Biglane or Judge Russell?

A. Yes.

Q. And is the financial relationship comprised in the main of oil and gas interests?

A. I don't know whether it's in the main. I know that they're in real estate investments together. I know Judge Russell has put Mr. Biglane in real estate investments from what I understand which were very profitable and Mr. Biglane has put Judge Russell in oil and gas transactions.

Q. Have they been profitable?

A. I understand they have.

Q. Were you interested in establishing --

A. I don't know for a fact but I understand they have.

Q. Did you understand that from Judge Russell?

A. Yes.

Q. Were interested in establishing a relationship with someone similar to Judge Russell's relationship with Mr. Biglane?

A. Well, I certainly would like to have.

Q. And do you know is Judge Russell and Mr. Biglane long time friends?

A. They've been friends for quite a few years and I've been a good friend of Mr. Biglane for quite a few years also and of Judge Russell.

Q. Do you have a financial relationship with Mr. Biglane?

A. No.

Q. Did you seek investments from Mr. Biglane?

A. Not to my recollection. It's possible that I did. It's possible I might have talked to him once or twice.

Q. Well, were any investments forthcoming?

A. No.

Q. Why not?

A. Have to ask Mr. Biglane that.

Q. So you made the request and none were forthcoming?

A. Yes.

Q. And is it fair --

A. I say yes. Perhaps. I don't recall specifically but I think maybe I talked to Mr. Biglane on maybe one occasion. I really don't know to be honest with you. I know I would like to have.

Q. Did you ask Judge Russell to speak to him on your behalf?

A. Not that I recall.

Q. So is the fair to say that you wouldn't mind -- have you ever articulated the fact that you would like a relationship with someone the way Judge Russell has a relationship with Mr. Biglane?

A. I might have.

Q. Now Carroll Ingram you testified about is a friend?

A. Yes.

Q. A man of integrity?

A. Yes.

Q. Who mentioned Wiley Fairchild first in your relationship with Carroll Ingram? Was it you or was it Carroll Ingram?

A. My recollection is that Carroll did. I heard him testify that his recollection was that I did.

Q. And, of course --

MR. FAWER: Excuse me. Thank you.

MR. WEINGARTEN:

Q. Continue. I'm sorry I cut you off.

A. That's my recollection.

Q. Now when you heard Carroll Ingram testify otherwise, did that trigger any better recollection on your part?

A. No.

Q. Did you review Carroll Ingram's grand jury?

A. It didn't change my recollection.

Q. Did you review Carroll Ingram's recollection in preparation for trial?

A. Yes, I read it.

Q. And you read that in the grand jury Carroll Ingram again said that it was you who first raised Wiley Fairchild to him and not vise versa?

A. Yes.

Q. And did that grand jury transcript trigger a better recollection on your part?

A. My recollection is just as I've stated it and if it were otherwise I'd tell you. It certainly wouldn't be anything wrong with my having mentioned it first but as I recall I did not. That's my honest recollection.

Q. So you and Carroll are at loggerheads on that point?

A. I wouldn't think --

MR. FAWER: Excuse me. May we have a direction that if he wants to sum up, that's for the jury at the end. Concluding whether there is someone at loggerheads I propose is not a question and I object to it.

MR. WEINGARTEN: Mr. Fawer summed up last 30 minutes his questioning of Judge Nixon.

MR. FAWER: All you have to do is rise if you have an objection. That's part of being a lawyer.

MR. WEINGARTEN: Thank you Mr. Fawer.

MR. FAWER: I want --

MR. WEINGARTEN: Thank you, Professor Fawer. I appreciate the assistance you provide.

MR. FAWER: Are you finished?

MR. WEINGARTEN: I may be and may not be.

MR. FAWER: Fine sir. Excuse me. Judge I had made an objection. It was what I view as a well founded objection.

THE COURT: Objection is overruled.

MR. FAWER: Thank you. Can I understand that an objection is something imposed made by rising; am I correct in addressing the court?

THE COURT: That's right.

MR. FAWER: And this is true for both sides they equally have the power to do it.

THE COURT: Right.

MR. FAWER: And that would mean for the prosecuting attorney as well, right, and his failure to do so means I go because the instrument said 2-25-80, and of course it was not, transaction that was concluded in 80, we never claimed it to be a 1980 transaction to anyone, including on the financial statement. We were not trying to engage in what you contend was subterfuge, saying it was done in 1980, because we declared it as a 1981 transaction for the first time in this report filed in 1982. If you'll look at the financial disclosure statement for the calendar year 1980, filed in the first part of 1981, this transaction is not listed on there because we did not claim it to be a 1980 transaction, that is, because it was not legally binding, was not reduced to writing. It could have easily been some if someone was trying to claim it to be an 80 transaction.

Q. I believe my question is, how did your accountant get 2-25-81?

A. He's deceased, Mr. Weingarten. And I can't ask him, unfortunately. He died of a heart attack. I would love to be able to ask him and I would have him here testifying if he were alive, to be perfectly truthful with you.

Q. You heard and saw exhibits that Fairchild original deeds were dated 2-25-81?

A. I heard that.

Q. Did you have those original deeds?

A. Did I have them.

Q. Yes?

A. No.

Q. How else could Mr. Logan have gotten the date 2-25-81?

A. You would have to ask Mr. Logan. I told you he probably approximated that.

Q. When you sign --

A. Do you have any evidence of any kind that I had those? If you do, I wish you would show it to me.

Q. Judge, I'd --

A. Because I did not. Your question to me is, answer is no, I did not.

Q. So is it a pure coincidence, Judge?

A. Excuse me, your own witnesses testified that I never saw those instruments. Carroll Ingram testified --

Q. Judge --

A. And Wiley Fairchild.

Q. Did you sign the documents?

A. What documents?

Q. The financial disclosure statements?

A. Certainly I did.

Q. You signed a document says Fairchild leases, 2-25-61?

A. Yes.

Q. Did you wonder, what's this? What's 2-25-61?

A. No.

Q. Is it just a coincidence then Mr. Logan pulled out the same number that appeared on the original deeds?

A. No. My opinion is, if that's what you're asking for, that's all I can give you, my question, my guess is that since he knew this was not a 1980 transaction because it was not in the form we furnished him for making the report for 1980, and he saw it was dated 19 -- the date on it was 1980 when he did see the written instruments when they came back from recordation, my guess is he assumed that this was the 81 transaction so he picked up the same date but dated it 1981 instead of 1980. That's my guess, I don't know that.

Q. So his guess, your guess is that Mr. Logan just happened upon the date of the original mineral deeds?

A. My guess is exactly what I just told you. I wish he were here so we could ask him.

Q. What is the point of the backdating?

A. Specifically what are you talking about? In this case or what's --

Q. Yes.

A. Just as your witnesses have testified, without, without variance, Mr. Wiley Fairchild testified --

Q. Judge --

MR. FAWER: Excuse me. Let's let him answer. Let him finish his answer. I ask for the Court to tell counsel to let a witness finish, even if he doesn't like the answer.

THE COURT: He may explain any answer he wants to.

THE WITNESS: Thank you, Your Honor. Carroll Ingra testified, I think even your witness Skip Jarvis testified that the point of it was, they said it was quite common in the oil and gas industry especially, and it's done every day outside the oil and gas business, to date an instrument to conform with the actual date on which the agreement had been previously reached.

BY MR. WEINGARTEN:

Q. What was the legal effect of doing that?

A. Specifically in what regard?

Q. Is there any legal effect in doing that?

A. Well, in this particular case, I don't know about a legal effect, but there was a practical effect because that set the value. You're talking about the value of the mineral interests at various times and I think that the value should be looked at and computed from the time that the original agreement was entered into because what I've heard so many things can happen in the interim with respect to oil and gas wells.

Q. All right. You'll agree, will you not, as you stated in the grand jury so clearly that the deal was only legally enforceable when Wiley produced the documents?

A. Legally enforceable. That's my understanding.

Q. And you'll agree, will you not, that you were to get paid from the origination of production?

A. Yes.

Q. So that could have been before 1980, after 1980. The money to you pursuant to those deeds was not affected one bit by the backdated?

A. That's my understanding, but the value certainly would be.

Q. And the point to the value is I wanted the deeds to appear to be what?

A. I don't know what -- is that a question?

Q. What was your concern about the value?

A. I didn't have a concern at the time. That was Mr. Ingram and Mr. Fairchild's concern apparently.

Q. Well, is it fair to say that Mr. Ingram's concern was that he was fearful that the wells were going to be very, very valuable when the deal was enforceable, it might look like a sweetheart deal?

A. I don't have any idea what he was thinking. You'd have to get in his head and look. I'm not trying to be cute. You'd have to ask Mr. Ingram. I think you did. That was not his testimony at all.

Q. Was that your sense when you signed the documents a year before, a year after they were dated?

A. I'm sorry. I didn't hear the first part of your question. I have a little hearing problem. I'm sorry.

Q. How much have you received at this moment from those deals?

A. Up till now how much?

Q. Income?

A. Income I think approximately 60,000, 50 to $60,000. Somewhere in that neighborhood. I have not computed it. If you have a different figure that you want to give me, I would accept it if you'll tell me it's correct.

Q. August of 85 it was 62 plus. Has more come in since?

A. 62,000, well, I think the last check we got was there was one the last one was I think either two or $300 instead of the previous amounts and the one before that I think was a hundred and some odd.

Q. Was that Wilkie?

A. That's Wilkie and Rogers combined.

Q. Is there a unitization dispute with the Wilkie well?

A. I have heard that there is.

Q. Is Mr. Fairchild disputing or contesting the unitization decisions?

A. I think that's what he said here on the stand if I remember correctly.

Q. If he wins, if he's successful in this pursuant, you stand to profit a great deal; do you not?

A. He said he stood to profit I don't know how much.

Q. Let's talk briefly about the notes. Did you tell Mr. Ingram that you needed some time to prepare or to get your money up or some such words?

A. Yes, I had as I told Mr. Faver on direct examination I needed some advance notice to finance the transaction if it was going to -- before it came down in writing.

Q. How much advance notice did you need?

A. I didn't specify any particular time.

Q. Well, what were you saying to him, what did you want?

A. I didn't say to him. I didn't give him a time. I just wanted reasonable notice.

Q. For what reason?

A. So I could arrange my financing, borrow the money in other words.

Q. Well, that wouldn't have taken a long time, would it?

A. Well, I would have hoped not.

Q. Well, at that time you had a relationship with the Mississippi Bank; did you not?

A. I had a relationship with several banks. I borrow from several banks. I owed several banks and I still do.

Q. Well, you had such a --

A. And I pay my notes and pay all my indebtedness.

Q. You had such a relationship where you could have applied for a loan and receive the profits or the proceeds from the loan in the same day, did you not, with the Mississippi Bank?

A. I don't know about the same day but I had pretty good working relationship with several banks. I had Peoples Bank in Biloxi and the First Mississippi Bational Bank and I believe the Natchez Bank and the Mississippi Bank, yes. And I probably could have gone to one or two more banks that I didn't do business with because I had a reputation of paying back the money I borrowed and --

Q. Well, you really didn't need time to get the money up, did you?

A. Yes I did.

Q. If you had a relationship with the Mississippi Bank -- let me withdraw that. Did you not make 6 loans in a period of time from April 80 to December 82 from the Mississippi Bank where you simply picked up the phone, made an oral application and received approval the same day?

A. I don't recall how many. If you say so, but if you represent that, I don't want dispute it but I'll say this to you. I don't owe the Mississippi Bank any money.

Q. I'm not suggesting you do.

A. Let me finish. I repaid every loan with interest that I made from them and I haven't owed money for a few years.

Q. I'm not suggesting you did. I'm simply --

A. I don't know what your point is.

Q. Did you really tell Carroll Ingram that you needed some time to get up the money?

A. You heard Carroll Ingram testify to that effect and I'm telling you that also.

Q. You did put your name to a false date on those notes, didn't you?

A. Did what?

Q. Put your name to a false date on those three notes?

A. No.

Q. You didn't sign those documents when it is so indicated on those notes?

A. I signed those documents the best of my recollection as I've told the jury the first part of March of 1981 and they bore the date that was on them when they came to me and they reflected the date of the agreement, that oral agreement that had been made.

Q. Well, wouldn't it have been an easy thing to do to take your pen and scratch out February 25th, 1980. I'm saying this

document April 1st 1981 and also indicate on the document tha
it reflects a deal that was cut before?

A. Well, what would have been the -- what was being hurt? What was the harm in my signing the documents?

Q. Were you not putting your name to a false date?

A. I told -- you've heard the testimony that that's quite commonly done not for the purpose or falsifying anything or deceiving anyone or causing any harm to anyone. That's the custom particularly in the oil and gas industry to let the instrument or the date of the instrument conform to the date of the transaction.

Q. And that note were those notes the fact that you signed --

A. And also my financial disclosure statements completely refute what you're saying that there was some ulterior motive because I didn't claim the transaction to be a 1980 transaction. I claimed it to be a 1981 transaction which is the date that it was actually signed 1981 the notes were signed.

Q. They were signed in 81?

A. Yes.

Q. You're saying the notes were signed in 81?

A. Yes.

MR. FAWER: Of course they were, Mr. Weingarten.

MR. WEINGARTEN:

Q. Which notes?

A. The 3 notes in question. And the instruments.

Q. And indicating 80?

A. They were signed by me in 1981.

MR. FAWER: I don't know if there's a slight mistake on your part in recalling it. Has there ever been a question of the date of the signing of the notes?

MR. WEINGARTEN: It's clarified Mr. Fawer. Thank you.

MR. WEINGARTEN:

Q. That signing obligated you to an extra year of interest?

A. That's correct.

Q. If you were buying royalties from Exxon would you have obligated yourself to an extra year of interest?

A. If we had an oral agreement at a specific time as we did here, absolutely. I am a person who has a word and I expect others to have a word and when I enter into an agreement with somebody, I'm living up to the agreement and I expect them to. I deal on the basis of trust. I want people to trust me and I trust people.

Q. You're saying if you had called up Exxon and Exxon said yeah, you can have this royalty interest and you didn't know the person, you would have dated the deal from that moment and you would have been willing to pay interest that was not legally enforceable?

A. I didn't date the deal to begin with. Mr. Fairchild or

Carroll Ingram or both did. You've heard their testimony. You called them as witnesses.

Q. Wouldn't it have been a simple thing to say hey, this is a deal that's legally enforceable when I got the paper. I'm not going to pay an extra years' interest? I mean why didn't you do that?

A. Why would I do something like that when I'm dealing with somebody on a basis of trust?

Q. This man Wiley Fairchild that you've known for so long?

A. That's being facetious. You know I didn't say I said I'd known him for so long.

MR. FAWER: Would it be a good time to take a break? Wouldn't have any more facetious questions or response any need for facetious. Your Honor, would this be an appropriate time to take a few minutes break?

THE COURT: How much longer are you going to be with this witness; do you know?

MR. WEINGARTEN: I certainly will not finish before break time.

THE COURT: Let's take a recess.

(Recess).

THE COURT: Proceed.

MR. WEINGARTEN: Thank you.

BY MR. WEINGARTEN:

Q. Judge Nixon, I believe you testified on direct that the first time you met Wiley Fairchild was in early 80?

A. That's correct.

Q. That would have been after your oil agreement?

A. Yes.

Q. Do you recall, did Carroll Ingram participate in that meeting?

A. Yes.

Q. Do you recall Carroll's testimony on that subject?

A. Yes.

Q. It's different than yours, is it not?

A. Yes.

Q. But your recollection is he was there on that occasion?

A. Yes.

Q. Did he arrange for the meeting?

A. He got in touch with me and told me that Mr. Fairchild wanted to meet me.

Q. All right. Was there an occasion when you met with Mr. Fairchild after the written agreement, or the written deal was consumated?

A. Yes.

Q. Was that the occasion when you told him if I can help you I will, if I can't I'll tell you that, too?

A. Yes.

Q. Mr. Fairchild testified to that, did he not?

A. I think he did.

Q. And his recollection was consistent with yours?

A. In what regard?

Q. In terms of recalling that remark by you?

A. I think that's a fair statement generally.

Q. I'm sorry?

A. I think that's a fair statement. I don't know whether he said those exact words is what I mean, but yes.

Q. At least on that point Wiely's recollection was correct?

A. It was correct on that point.

Q. Yes. When you were talking about helping him, what were you talking about?

A. I think I explained it, but if you would like for me to -- it was really something that's normal, I would normally say to someone. I think I explained that already, but I'll go through it again if you would like for me to.

Q. Why don't you?

A. I think as a matter of course you might say that to someone that you were certainly grateful to for putting you into a transaction, as I was. I wanted to make sure that he knew, as I told so many of my friends and other people, alerted them there are certain things a federal judge can't do. If I weren't a federal judge maybe I could do certain things for them that I can't, such as if I were practicing law I could give them legal advice. I can't as a federal judge. That was one of the examples I used.

Q. Did Mr. Fairchild do anything or say anything that would have caused you to give him that admonition?

A. No. It wasn't an admonition, though. I wouldn't call it an admonition.

Q. That was just your response to being put into this deal?

A. Yes. I talked to him, he was very nice, complimentary about my desire to help my family, what have you, the reasons that I was trying to supplement my income. Look down the road to educating my children. I had another personal problem with one of the children that was expensive.

Q. Judge, in your testimony yesterday you indicated that during this period of time you invested in other wells, is that correct?

A. Yes.

Q. Other mineral interests?

A. Yes.

Q. And I think it's actually Defense Exhibit 39, the Patison Petroleum Corporation, Chevron, I guess it's Point Coupee Parish, and Geosouthern?

A. That's correct.

Q. How did you get involved in those other transactions? Were these through friends as well?

A. Yes.

Q. Would these be ventures yourself and -- you and your friends would participate in?

A. Yes.

Q. These other transactions are very different than the Fairchild?

A. In what respect?

Q. Fairchild you're buying properties from Fairchild; with these other transactions you and a friend are purchasing jointly property from someone you don't know.

A. I'm not sure whether the Point Coupee was purchased from our friends the Stocketts, what they had purchased, or whethe we purchased along with them. I don't really recall that. Whatever you say, whatever -- if you have information I'll agree with it.

Q. My understanding, correct me if I'm wrong, is that Stocke purchased similar property to yours but more?

A. All right. I'll accept that. I was thinking we purchase from them because they were the ones who put us in it. They were in the oil and gas business also, that is the business o purchasing and selling royalties as I understand it.

Q. The Stockett investment wasn't too good, was it?

A. No.

Q. Stockett lost money on that too, did he not?

A. I would assume he did.

Q. There was no backdating in any of these other transactions, was there?

A. Not that I recall.

Q. In every instance you went to a bank and signed notes for the purchase -- for the loan?

A. I would have done that in this transaction if Mr. Fairchild hadn't volunteered that his company would carry the notes, carry the paper. That's why I told Carroll to let me know, I was going to go to the bank --

Q. Who conveyed that message? Was it Mr. Fairchild or Carroll?

A. Carroll conveyed the message to me, but I assume it came from Mr. Fairchild. Carroll wasn't carrying the notes, Fairchild company was.

Q. When was that?

A. When was what?

Q. In what part of the transaction did Carroll convey that message?

A. When Carroll called me shortly before he came down with the instruments, first part of 1981.

Q. That's the first time you even consider financing the transactions with Mr. Fairchild?

A. I didn't consider it. I was told he was going to finance it, I said well, fine.

Q. I mean you were told, you could have said no, erased that possibility, could you not?

A. He didn't raise the possibility. Carroll told me in response to my question, I thought you would give me some notice so I could arrange for my financing, he said, I don't know whether he said Mr. Fairchild or the seller, was going to finance it, that is, carry the paper.

Q. That was --

A. I said fine.

Q. That was just offered to you out of the blue in the sense that you never considered it before?

A. Well, I hadn't asked for it if that's what you mean.

Q. Okay. You discussed Geosouthern, how it came about you got out of that investment. Is it fair to say that a number of investors in Mississippi got involved in a venture in Texas?

A. That's my understanding.

Q. And you got involved in it through a banker friend of yours named Pittman?

A. Yes.

Q. You were, you made it known to Mr. Pittman you were interested in investments?

A. Bill Pittman was the president of the branch of the bank, First Mississippi National Bank on the coast. He was a friend of mine, we belong to the same club together, we socialize a little together, not on a really personal basis. We happened to be together and I talked to him. He did a lot of banking, in his bank, in fact, that is the bank, First Mississippi National Bank, that's where my principle accounts were at the time and have been for some years.

Q. So you were talking to him about possible investments?

A. Yes.

Q. He came up with a suggestion about this project in Texas named Geosouthern?

A. That's right.

Q. And you borrowed approximately ten thousand dollars from Pittman's bank and invested in Geosouthern?

A. Yes.

Q. And Pittman --

A. Wasn't Pittman's bank; he worked for the bank.

Q. I'm sorry. Okay. Pittman invested too?

A. That's my understanding, he said he was going to.

Q. And a number of other prominent people in Mississippi?

A. I found out later that was correct.

Q. One day you learned that very serious allegations of fraud had been lodged against these people in Texas?

A. I don't know exactly what the allegations are, but I think that statement, fair statement that that was the basis of the claim.

Q. Were there security fraud violations, or allegations of securities fraud, was there even a racketeering, civil RICO?

A. If --

MR. FAWER: I object. As to the Judge, is this really relevant to this case? If is it, I'd like a proffer.

MR. WEINGARTEN: You raised the subject.

MR. FAWER: I raised it it to point out --

MR. WEINGARTEN: This is responsive to direct.

MR. FAWER: With all due respect, Your Honor. I raised it so the jury would know exactly the full scope of all his other investments. One of the investments, Your Honor, is the Geosouthern which by 1982 he has sold. I had him explain, if you recall, Your Honor, that there was a piece of litigation, the one he's referring to that unbeknownst to the Judge was filed in the Southern District of Mississippi, he then had to recuse himself and got out. He's taking that as some sort of opening to suggest that this is a case, he's a potential plaintiff in that case, and I object to this unless there is a proffer to show the connection, Your Honor.

THE COURT: Mr. Fawer, once you raise something on direct, he's got a right to go into it in cross-examination.

MR. FAWER: I have no problem. But the issue of the fact of -- nevertheless, there is some connection, apparently the people from whom they bought, Pittman and he and others are being charged with some violations, civil violations of law, one of which is under the RICO statute, racketeering statute. Now what relevance does that have in this courtroom concerning this judge's trial? I'm asking for a proffer on just that limited area.

THE COURT: You are overruled.

MR. FAWER: Thank you.

BY MR. WEINGARTEN:

Q. I can't remember where I was. Can you read the last question back, please?

(Question read.)

THE WITNESS: I don't know.

BY MR. WEINGARTEN:

Q. But the allegations seriously undermined the value of the investment, did it not, or did they not?

A. I don't know. As soon as I found out that suit had been filed and I was a named plaintiff in it, which came about as a misunderstanding, I immediately recused myself, didn't even read the pleading, never have read the pleading, and immediately disposed of my interest.

Q. The fact that you're a federal judge doesn't prohibit you from being a plaintiff, does it?

A. No, but I don't think, I didn't, I wasn't comfortable with being a plaintiff in a lawsuit filed in my own court, even though I would not be the presiding judge. Certainly none of the other judges of this district would sit and should not sit, and they never did. In fact, Chief Judge of the Fifth Circuit sat and tried it.

Q. Even after you --

A. According to the newspaper.

Q. Even after you recused yourself and gave up your investment, the Fifth Circuit sent down the chief to try this case?

A. No, they didn't send down the chief. Chief Judge Clark is designated to sit as a district judge in this district. He lives in Jackson.

Q. Okay.

A. He tried the case as a district judge.

Q. Is it fair to say that you also were not particularly interested in having a ten thousand dollar investments in property that was the subject of a civil fraud suit?

A. I think that's a fair statement.

Q. And you discussed this matter with Mr. Pittman, who had gotten you into this investment?

A. I went and talked to Bill and said Bill, I don't want to be in this investments any longer. The suit is pending in United States District Court, it's not appropriate for me as a judge of this district to be a plaintiff in a lawsuit in this court. I didn't know I was going to be, and I would like for you to try to find a buyer for my interest.

Q. Who in the world would possibly be interested in buying an interest in property that was the subject of a civil fraud suit?

A. Well, perhaps a lot of people, because if the plaintiffs were successful they would recover not only what they had invested, but a great deal more. I think treble damages.

Q. Quite a gamble back in 1982, was it not?

A. I don't know.

Q. Mr. Pittman bought it?

A. He what?

Q. Mr. Pittman, the person who contacted you originally, reached into his pocket and bought your interest?

A. I don't know that he reached into his pockets, but he told me, he said I put you into it, Judge, and I can understand how you feel. He said I'm keeping my interest, and I'll purchase yours. He was always optimistic about winning the lawsuit, and I think the plaintiffs did win the lawsuit eventually on the securities violation aspect of it.

Q. He purchased your -- the amount that you had bought it for?

A. I think that's correct. I think with some debiting.

Q. Let's turn to 1982. That's when the royalties start coming?

A. Yes.

Q. Did Wiley Fairchild at any point in time around this time advise you that he overcharged you?

A. One time that I talked to Mr. Fairchild, I don't know which time it was, I think it was probably in the May meeting, I'm not sure when it was, May or 1981, I'm not sure when it was, made the statement to me once that he said Judge, I might have overcharged you for these interests because I made such a big profit. I said well, I'm certainly satisfied with the investment.

Q. When do you think he said that to you?

A. I don't know.

Q. Would that have been after the royalties started coming in?

A. I don't know when it was.

Q. In 1982 I guess --

A. I think it was in 1981, though, at the May meeting, but I'm not sure. If I'm not sure of something I'm going to tell you.

Q. Okay, thank you. There came a point in time when Wiley Fairchild expresses interest in putting you in another deal?

A. I don't know that he expressed interest. He mentioned it to me, if that's what you mean, in October of 1982 at this reception given for me when I became chief judge of the district.

Q. Is it your recollection that that's the first time he makes such a mention?

A. That's my best recollection.

Q. Did you discuss this with Carroll Ingram?

A. I think I mentioned it to Carroll at some time.

Q. Did you express enthusiasm with the notion of more deals with Wiley Fairchild?

A. I expressed enthusiasm if I could, would be in something that was as good as the one that I was in.

Q. And were you envisioning a situation like Judge Russell's with Mr. Bigiane, a number of investments with an astute oil man?

A. Not to that extent, because my source of funds was much more limited I think than Judge Russell. I don't say that disparagingly or facetiously. I think I'm at the bottom of the ladder each year when the newspapers publish the financial worth of the judges of this district, I think I'm ranked as the poorest and Judge Russell is ranked as the wealthiest.

Q. And then came the occasion when you were in Hattiesburg and you visited Wiley and Wiley mentioned blackmail, is that correct?

A. Yes.

Q. Now, just so we're clear on this, when you were in Hattiesburg on that occasion did you have a preconceived notion that you would see Wiley Fairchild?

A. I don't know that I had a preconceived notion. I did know that I had recently paid off my loans and I was up here and took the opportunity to call him and talk to him, yes.

Q. Just socialize?

A. I say the loans, the obligation to pay the three notes, I paid them off on March 1st of that year.

Q. Did you do that --

A. Finished paying them.

Q. Were you intending to pursue the possibility of more investments on that occasion?

A. Well, if he would have brought it up or mentioned it, I was certainly interested, but I didn't bring it up and neither did he.

Q. And before you left for Fairchild's, you made an arrangement to see Bud Holmes?

A. I had already done that, yes.

Q. First made -- you made plans to see Bud and then you called Fairchild?

A. Yes.

Q. And then you go to Fairchild's?

A. Yes.

Q. You call, go in the back way to Mr. Fairchild's?

A. I go in the same entrance I had gone in before and the entrance he told me to go in whenever I came to see him. It's not a back entrance. It's a front entrance but it's the entrance into his private office rather than going through the business office and going around.

Q. Okay. It's your testimony that his brother Rodney is in there?

A. Yes.

Q. You had a prior relationship with Rodney?

A. I didn't have any prior relationship with Rodney.

Q. Do you know him?

A. As I testified previously, I might have met him before. I don't know. The name was familiar, his face looked familiar. Whether we had met somewhere I don't know, didn't recall.

Q. And Wiley kicks Rodney out of the office?

A. I wouldn't say he kicked him out. He more or less told him to get out.

Q. Okay. And then what does he say to you?

A. Exactly what I testified to previously. He said judge, you're a good man, he said, and I know you've got a good reputation. Said I've got a son who got into some trouble out at the airport on a drug matter, he's been nothing but trouble to me all his life. I think he mentioned something about they hardly talked, I'm not sure, but I think he did. I may not have said that previously, but I got to thinking about it. He may have mentioned that also. And he said I'm not asking for a thing for him, he's probably getting what's he deserves, which is a pretty good deal. He said but what I'm concerned about, what I'm mad as hell about is Bud Holmes is blackmailing me. He said dragging Fairchild's name through the mud in the news media, and then he mentioned the fact that someone else who was involved was not even charged or indicted.

MR. WEINGARTEN:

Q. Okay. Is that the first time you knew that Wiley Fairchild -

A. That's, of course, when he told Carroll Ingram's name.

Q. Is that the first time you had heard mention of Drew Fairchild?

A. No.

Q. You had seen something in the newspaper?

A. Yes, the newspaper and/or the television.

Q. And that would be criticism of Bud Holmes as to the way the case has been handled?

A. That was my recollection.

Q. So in your mind when you were sitting in Fairchild's office was a notion that Drew Fairchild was Wiley's Fairchild's son, he had gotten involved in smuggling, the case had been in the Forrest County courthouse and there were public allegations that Bud Holmes had mishandled it; is that fair?

A. I think so.

Q. So you had that information when you walked into Wiley Fairchild's that afternoon?

A. I had read -- whatever I had seen in the newspaper and I didn't recall exactly what it was, but I recall generally what it was about.

Q. And now Wiley Fairchild alleges that Bud Holmes is blackmailing him as well as Carroll Ingram?

A. He thought Carroll might be in on it.

Q. Pretty serious allegation?

A. Yes. Very shocking.

Q. Blackmail, of course, is a federal crime?

A. If it were blackmail technically and legally I guess it would be, yes.

Q. Well, did you know whether or not it was?

A. What?

Q. Blackmail?

A. If it were blackmail?

Q. I mean did you have any basis to come to you in conclusion whatever when it was blackmail it was Wiley Fairchild was talking about?

A. That's the word he used and he used it in the context of dragging his name through the news media and that would not constitute blackmail in my legal opinion if you're asking for it if that was all there was. I thought the charge -- I couldn't believe that. I thought it was nonsense, but I thought that Mr. Fairchild was sincere in his complaint and belief.

Q. Well, did you not owe it to Mr. Fairchild to pursue it a bit further and find out perhaps if there were some facts to substantiate it?

A. No, and I wasn't representing Mr. Fairchild and I can't practice law. I was not a law enforcement officer and if Mr. Fairchild had wanted to make a complaint, formal complaint as he apparently did to the FBI later in 1984, he certainly was free to do that.

Q. Did you encourage him to do so?

A. No.

Q. Well, here's this man who you had a financial relationship with --

A. He didn't ask me to do anything about it.

Q. Well, why was he volunteering this information to you?

A. You have to ask him that.

Q. Well, your --

A. I certainly didn't enjoy hearing it from him.

Q. Well, here's a man with whom you have a substantial financial relationship and you're looking to have even a greater financial relationship alleging that 2 very close friends of yours are doing something very improper; is that fair?

A. Well, I didn't know exactly what he was talking about except what I could gather and apparently what he was talking about was he said -- was the blackmail by dragging the Fairchild good name through the news media or having it occur.

Q. If Holmes had called up Fairchild and said give me $50,000 or I'm going to issue press releases about your son, that could conceivably be blackmail; could it not?

A. Are you asking for legal advice?

Q. I'm not asking for legal advice.

A. I can't give legal advice.

Q. How about your opinion?

A. I guess it could conceivably be if that had happened. Do you have any evidence to offer that that happened or posing that as a hypothetical?

Q. Posing as hypothetical?

A. I understand.

Q. Did you pursue any further considerations with Fairchild to find out if he was talking about anything like that?

A. No, because from what I gathered he was not talking about anything like that. I'm sure he would have said that to me. I assume he would have if that had happened. Do you contend that was the case?

Q. How did you gather that?

A. How did I gather what?

Q. How did you come to any conclusions at all as to what Mr. Fairchild was talking about?

A. Based on what he said.

Q. You said he said that Bud Holmes is blackmailing, he's dragging my name through the newspaper?

A. Good Fairchild name through the news media, dragging through the mud and news media.

Q. You came to the conclusion that this whole thing was nonsense based on those two pieces of information?

A. I thought that it was nonsense, but.

Q. Well, Mr. Fairchild was worked up?

A. He was what?

Q. Was he worked up?

A. He was mad.

Q. Very angry?

A. Yes.

Q. Well, did you take Mr. Fairchild seriously at that time?

A. I thought he was sincere but I didn't think there was anything to it.

Q. How could you come to that conclusion?

MR. FAWER: Your Honor I've heard -- the third time asked the same thing. The man said that's the conclusion he came to. I guess he could ask it 10 more times and I guess I could listen to it, but I would object being repetitious the man answered it. Been asked and answered four times now.

MR. WEINGARTEN: Keeps increasing everytime Mr. Fawer openes his mouth.

MR. FAWER: How many times you asked the question?

MR. WEINGARTEN: I ask for a ruling, Your Honor.

MR. FAWER: Fine. I ask for a ruling, Your Honor.

THE COURT: Sustain the objection.

MR. WEINGARTEN:

Q. You certainly had trust in Mr. Fairchild's judgment as to the value of mineral leases; is that correct?

A. I don't think I put any trust in the judgment as to the value of the leases. I paid what the price he asked if that's what you mean. I thought he would set a fair price based on his reputation.

Q. And his reputation, behind his reputation is your sense that he knew what he was doing in this particular business?

A. I was told that he was — he did rather.

Q. And by the time you were sitting in his office on that occasion, that conclusion was born out, you were getting royalties and satisfied Mr. Fairchild knew what he was doing in this very, very sophisticated business?

A. Two of the wells 2 of the 3.

Q. When he said Bud Holmes was blackmailing him, you came to the immediate conclusion that was nonsense?

A. I don't think that was in the field of his expertise of oil and gas.

Q. Do you know --

A. That was a legal term he used and --

Q. Well, he had a sense that something very wrong was going on; did he not?

A. That was apperently his opinion.

Q. And you concluded that it was nonsense?

A. Based on what he told me, I couldn't believe it. I couldn't lead myself to believe it because I had no basis for believing at that time like that about Bud Holmes and certainly not Carroll Ingram.

Q. He mentioned that someone who was also involved in the smuggling was not prosecuted; is that correct?

A. He didn't say smuggling. He said who was involved in the same thing.

Q. So in addition to alleging blackmail he was saying that there was another smuggler who was not being prosecuted?

A. In essence that was his complaint.

Q. Did you conclude that was nonsense?

A. I didn't know.

Q. If that were in fact true --

A. I didn't reach any conclusion on that. I wanted to get out of there as quickly as I could.

Q. Well, if that were true --

A. I was shocked.

Q. Mr. Fairchild's second allegation were true that would be substantial favoritism on Holmes part; would it not?

A. I don't know. I didn't know the facts and never had been given the facts of that matter at that time. Just that general statement.

Q. So you concluded the first part was blackmail and you came to no conclusion as to the second part?

A. Would you repeat your question?

Q. When you came to the conclusion that the blackmail allegation was nonsense but you came to no conclusion as to whether or not Holmes had shown favoritism with regards to the other alleged smuggler?

A. I told you the conclusion is nonsense is because I knew Carroll Ingram and Bud Holmes for a long time. They were both friends of mine, long time friends and I couldn't bring myself to believe that they were blackmailing somebody and then the context in which Mr. Fairchild used the term blackmail was having the Fairchild name drug through the mud and news media.

Q. And he made this second allegation, did he not, that Holmes had willfully failed to prosecute another equally guilty party?

A. He didn't make that statement.

MR. FAWER: That is a misstatement of the testimony, Your Honor, and he knows it. There never was the linking of the name Holmes with what he's just described. He simply -- I mean can be a restatement of the question as the testimony has been adduced from this witness and from other witnesses.

MR. WEINGARTEN:

Q. Was it not your understanding that what Fairchild was talking about in the second allegation was that there was another smuggler equally guilty as his son who had not been prosecuted?

A. He didn't say anything like that. He said what I told you. He said I didn't know who he was complaining about whether he was complaining about the federal Government on the state since apparently no charges had been brought against this other person. And as I understood it, the matter started with the federal Government. The DEA Department of Drug Enforcement Administration of the United States Government that handled the case at first and apparently brought it in to the United States attorney Mr. Phillips.

Q. When Fairchild mentioned the second allegation, you were not interested enough to elicit any more information?

A. It wasn't my obligation or my duty and you show me anything in the law that says it was. I was not a law enforcement agent. He was not making a formal complaint to me as such and gave no details and I wanted to get out of there. It was very embarrassing to say the least. Very shocking.

Q. Why was it embarrassing?

A. I didn't know what to say and I didn't say anything.

Q. Well, did you say Mr. Fairchild you're making very serious allegations? Why not report them?

MR. FAWER: Let's stop and listen to what we have. The man has just said he didn't say anything. The next question is well, did you say X. Your Honor, I would object to the form of the question in light of the preceding answer unless he wants to hear the same answer repeated. The man has just said he didn't say anything. He himself didn't say anything. Now he asked that question.

THE COURT: I'll sustain the objection.

MR. WEINGARTEN:

Q. Why simply did you not tell Fairchild if he's got a problem, talk to law enforcement?

A. One thing, I wasn't giving legal advice. Another thing, I had assumed that he would probably know he could do that because apparently he did it in 1984. And based on what he told me I already answered the question I think two or three times for you.

Q. Did you come -- did you receive the impression that Fairchild wanted you to talk to Holmes?

A. I had the impression that he wanted me to mention that charge of blackmail.

Q. Upon what was that impression based?

A. Just a feeling I had.

Q. Can you describe it?

A. Whether it was right or wrong, I don't know.

Q. Can you describe it any further?

A. No.

Q. Well, he makes allegations --

A. Because he didn't ask me to and, of course, I didn't say I was going to.

Q. Well, did he articulate any words that you can recall that would have caused this impression?

A. Just what I told you are the only words I recall him articulating. I've told you three or four times.

Q. Just ask one more. You can't point to anything that would have caused this impression?

A. I think I answered your question.

Q. And just coincidentally you had plans to see Holmes following the meeting with Fairchild?

A. I don't know whether you'd say coincidentally but I told as I testified previously I had plans to go out and borrow the records which I had been intending to do and had called about it.

Q. It was purely unrelated?

A. What was that?

Q. Certainly unrelated?

A. Yes.

Q. Where Holmes is alleged to be a blackmail and your prior plans to see Holmes, that's pure chance?

A. I've already answered your question.

Q. So you go out to Holmes and you drive out to his farm?

A. Yes.

Q. Who was out there?

A. As I stated previously, I don't recall whether he was there already or not.

Q. He eventually arrived or eventually you 2 got together?

A. Yes.

Q. Was anyone else there?

A. I don't recall. I've been out there several times and I don't recall whether Haskel was there or anyone else was there or not there.

Q. Was Marsha Bailey out there?
A. I don't recall whether she was or not.
Q. What happened once you got there?
A. I don't recall seeing her but she could have been there.
Q. Was she involved in the transmittal of Hank Williams records to you?
A. Not that I recall.
Q. You got out there and I suppose you had a greeting and then did what?
A. Well, I've already stated. If you'll just ask me specifically, I'll try to be more specific if you have something in mind.
Q. How long a period of time elapsed before you told Bud Holmes about what Fairchild had said?
A. I don't know.
Q. Did you make any reference to Fairchild prior to talking to Bud about the blackmail allegation?
A. On that occasion?
Q. Yes.
A. No.
Q. I mean did you discuss your financial relationship with Fairchild?
A. Not on that occasion.
Q. Had you discussed with Holmes your financial relationship --
A. I think I had at some time mentioned to Bud that I had

invested in oil and gas royalties with Mr. Fairchild.

Q. Did you ever convey to Bud the sense that you were very pleased with the relationship you had with Fairchild?

A. I might have.

Q. Did you do it on that occasion?

A. I don't recall that I did.

Q. And then there came a time when you advised Holmes that Fairchild is accusing you of blackmailing him with reference to some -- to this matter, some matter with his son?

A. Yes, in essence.

Q. Why didn't you tell him that?

A. Really what I told him is I said Wiley Fairchild is accusing you of blackmail and I'm trying to remember the words. I don't remember the exact words. They are as I stated yesterday. And before I could get very far is when he came back with that response that I told you about yesterday. He was pretty mad about it.

Q. If in fact there was blackmail going on, would it have been the appropriate thing to tell Holmes?

A. I don't understand your question.

Q. If Wiley Fairchild's allegation was well founded, would it have been appropriate for you to tell Holmes?

A. I wasn't going to mention. I had no intention of even mentioning it but it was weighing on my mind. I passed it on to him what the complaint was.

Q. And did you do it because it was your sense that that's what Fairchild wanted?

A. No.

Q. Well, what was the motivation?

A. Bud was a friend of mine and I wanted to let him now what Mr. Fairchild was complaining about.

Q. Well, did you also tell him about this other individual who had not been prosecuted?

A. No.

Q. Why did you tell him one and not the other?

A. Because that's what I did and I didn't know whether Mr. Fairchild was complaining about Bud with respect to the other individual or the federal Government or what and he didn't go into any detail and I don't even remember a name that he mentioned.

Q. Well, did you tell Bud so that Bud would clean up his act with Wiley Fairchild?

A. No. I just passed it along to him.

Q. It was weighing on your mind and you originally had decided?

A. Yes.

Q. Why did you originally decide that you weren't going to tell him?

A. Because I didn't want to get involved at all in such matter between them and I was sorry that Mr. Fairchild had seen fit to do that really to me. I was a victim of circumstance there actually in effect what it was.

Q. You mean Mr. Fairchild giving you this information is that what you're talking about?

A. Making a complaint.

Q. You passed on the information?

A. Accusing Bud and Carroll Ingram of blackmail by dragging the Fairchild name through the mud and the news media.

Q. You give this information to Bud, Bud explodes and then Bud wants to talk to you about it?

A. He wanted to tell me about the Drew Fairchild case.

Q. And you resisted?

A. I told him I didn't want to hear about it. I didn't have all night and once you let Bud start talking, there was nothing wrong with me listening to it or listening hear about it. Once you heard Bud start talking, you can't turn him off and I wanted to get home.

Q. Fairchild makes this very serious allegation about a very close friend of yours and the friend wants to explain to you what it's about and you wouldn't listen?

A. I wasn't going to listen to Bud all night. He had already -- he had already responded when he said the son of a bitch is paranoid. Those were his words. And he thinks everything's trying to blackmail, beat him out of his money and he's got more money than that he could ever spend. Everybody is after his money he said and he said --

Q. Is that what he said?

A. He said -- I forget his words exactly but he said that there's nothing to it. It's all been worked out. After I told him I didn't want to hear anything about it, that's the only thing he said.

Q. And you cut him off because you weren't interested?

A. I cut him off because I didn't want to listen to him all night.

Q. How about for five minutes?

A. I thought it was nonsense. I told you four or five times.

Q. And there was no discussion of the --

A. If I had to do it again, I'd never mentioned to him.

Q. I'm sorry?

A. If I had to do it again I would never mention, pass on the complaint.

Q. All the while were you going through the Hank Williams records?

A. Not all the while, no. Some of the time I was there of course.

Q. Just sitting around --

A. Yes, I told you I had 2 drinks out there with him.

Q. What else were you discussing with Holmes?

A. I don't recall anything in particular. We were discussing football and --

Q. You didn't mind listening to Holmes about football but you didn't want to hear about this very serious allegation?

A. If you've ever been around Bud Holmes and he starts to tell you about something that you don't know anything about, you're in for a long, long wait.

Q. Well, Holmes is a lawyer --

A. Particularly since he'll probably talk on the telephone four or five times while he's telling you.

Q. Holmes is a lawyer; is he not?

A. Yes.

Q. And successful one?

A. Yes. I think so.

Q. Extremely successful businessman; is he not?

A. I think so.

Q. He negotiates for a great number of national football league players, doesn't he?

A. I don't know how many but manages a few very top notch players.

Q. He can convey a message when he wants to; can he not?

A. I don't know what you mean.

Q. He can explain something in an articulate concise form when he needs to; can he not?

A. No.

Q. He can't?

A. Not to my knowledge. I've never heard him or seen him do it in or out of the courtroom. Frankly, I don't say that to belittle him or make fun, but I say that because it's true.

Q. And you were just too busy --

A. I think you heard him testify, as I did. You might agree with me, when he testified here previously.

Q. Your time was too precious to hear Holmes' explanation in response to this allegation?

A. I don't think you're being fair. Is that a question or a statement?

Q. Is it true or not? You just --

A. No.

Q. You just didn't want to listen to him?

A. No. I think you understand what I'm saying, in all fairness.

Q. In all fairness, Wiley Fairchild, person who you were greatly interested in doing business with, alleges that this very close friend of yours is a blackmailer and you didn't take the time to hear Bud Holmes' response. The question is why not?

A. I told you in what context I heard it. I was not judging the matter, I was not trying to decide who was right or wrong, and I wasn't called upon to do that.

Q. You did pass the information --

A. I got caught right in the middle there and I got out as fast as I could.

Q. There came a time when there was a call back to Wiley?

A. Yes, Bud made a call. Unbeknownst to me --

Q. Was he in the same room?

A. -- until he put me on the telephone.

Q. Were you in the room together?

A. We were in the same room, yes, with the records being played.

Q. Bud is talking to Wiley and you just don't have a clue that that was going on?

A. I don't know about the clue. I didn't know it was going on if that's what you mean. Bud was on the phone almost constantly, off and on the telephone while I was there, as he usually was. If you try to keep up with Bud Holmes' telephone conversations, that's a full time job.

Q. How far away from you was he?

A. I didn't go there to listen to Bud talk on the phone, I went there to borrow the records, Mr. Weingarten.

Q. How far away from you was he?

A. I don't know. Maybe fifteen, twenty feet or more.

Q. Did you hear the word Wiley?

A. No, not until he called me over there and handed me the telephone.

Q. Never heard the word Drew?

A. No.

Q. Just had no idea what Bud Holmes was talking about on that phone on that occasion?

A. Didn't hear it. I don't know how I could have an idea about it. I wasn't trying to listen to what he was saying on the telephone, I was playing the records.

Q. Was Bud sober on that occasion?

A. No, I don't think he was.

Q. When you got on the phone I think you said Wiley was half drunk or half asleep?

A. His speech was very slurred and very different than I heard it before.

Q. So of the three participants in this conversation, only you were sober?

A. I didn't say that. I'm not going to make an accusation Wiley Fairchild wasn't sober. I don't know what was wrong, whether he had been sleeping or what.

Q. Now you listened to Wiley Fairchild's version of that conversation in court, did you not?

A. Yes.

Q. And it's your testimony that that's incorrect?

A. My testimony is that what I'm telling you is what happened.

Q. Did you testify yesterday that you were disgusted that you had been given the phone?

A. I didn't like it at all. Whatever word I used, I'm telling you now I didn't like it at all.

Q. Why not?

A. I didn't know Bud was going to pick up the phone and call Wiley Fairchild, the condition he was in, and mention this matter to him. I didn't do it for that reason. I didn't pass it on for that reason.

Q. You had just told Bud Holmes that Wiley Fairchild had accused him of blackmailing him. What response did you expect?

A. From Bud?

Q. Yes.

A. I didn't know.

Q. Was he going to sit back and have the information registered, that's interesting, and move on?

A. I don't know. If you know Bud, he's sort of like water off a duck's back a lot of times. Just as I told you his attitude toward the news media was. He'd curse them and then say he didn't give a damn what they said about him. Those are his words, I'm not --

Q. Did you tell him that Wiley had made this allegation out of friendship for him?

A. What?

Q. Out of friendship?

A. I didn't understand the beginning, I'm sorry.

Q. I'm sorry. Did you tell Bud about this allegation out of friendship for Bud?

A. I passed it on to him because I was a friend of Bud's, yes, been friends a long time as I've told you constantly.

Q. You wanted this to be cleared up? You wanted the matter to be cleared up?

A. Well, I hope there wasn't anything to it.

Q. Here Bud was trying to clear it up?

A. I don't know what Bud was trying to do. I don't know what he said on the telephone. I didn't know he was making the call.

Q. You came to no conclusions when he gave you the receiver?

A. I came to a conclusion.

Q. What was that?

A. I wished the heck I hadn't gotten into that situation, and he hadn't made the call and gave me the telephone.

Q. At that point what was threatening?

A. Nothing was threatening. I was just uncomfortable. I think you can understand what I'm saying.

Q. I'm --

A. His, here's a man, Mr. Fairchild, that I was in a business transaction with, and was -- we had struck up some type of friendship, saying this about two long-time friends, Carroll Ingram and Bud Holmes, and to say the least, I didn't enjoy the situation and being there. I didn't appreciate even being involved in the complaint of blackmail through the news media. He used the word blackmail, I'm not using that word. That was the word Mr. Fairchild used. Plain and essence was the Fairchild name was being drug through the news media, thanks to

Bud Holmes and possibly Carroll Ingram.

Q. Judge, can you tell that at that time without asking Wiley Fairchild some more specifics?

A. Did what?

Q. Can you make that conclusion, could you come to that conclusion without asking Wiley Fairchild what he was talking about?

A. That's what Mr. Fairchild told me, the words I told you. That was a sense of what I understood and heard, from what I heard.

Q. What was your conversation with Wiley Fairchild on the phone?

A. I told him hello. And said Judge, how are you? He said I'm glad you mentioned that matter to Bud, I'm satisfied.

Q. Great news, issue is over?

A. I don't know.

Q. Why were you disgusted?

A. I didn't want to get involved in the matter. I didn't want to be involved in it. Bud's condition -- I didn't know what was going on until I got on the telephone.

Q. Didn't you have a great satisfaction at that time, the person you're in the deals with makes an allegation about a close friend, you tell the friend, the friend calls Wiley Fairchild, and Fairchild is satisfied?

A. I wasn't dissatisfied with it.

Q. I thought you said to Mr. Fawer you were disgusted?

A. I was disgusted with Bud doing that without even telling me what he was doing, making a phone call, putting me on the line with Mr. Fairchild without even asking me anything about it. Maybe the word disgusted means one thing to you and another to me, but I didn't appreciate that at all. I wouldn't have done that to a friend.

Q. You were not happy with Bud but you were satisfied with the results?

A. I don't know, what do you mean by satisfied? I wasn't dissatisfied. I wasn't disturbed about the result, what I thought might be the result, I don't know. Apparently that wasn't the result as it turned out.

Q. Ingram was not advised by you that Fairchild had made this allegation?

A. That's right.

Q. Why did you tell Bud but not Ingram?

A. First of all, Wiley Fairchild wasn't nearly as definite about Carroll as he was Bud. He said Carroll might be involved in it. I thought the matter was, at that time I thought it was — it was as you say satisfied, so why should I go tell Carroll about it. I was sorry I even mentioned it to Bud, and you heard Carroll blow up on the witness stand yesterday just being reminded Wiley Fairchild had said that about him one time years ago, so I didn't, it wasn't necessary and I didn't do it.

Q. You had a sense Wiley Fairchild wanted you to go to Bud; did you have the same sense Fairchild wanted you to go to Ingram?

A. No.

Q. What would be the difference?

A. Just what I told you, I just answered.

Q. The fact Bud was blackmailing him and Carroll might be involved?

A. I just answered your question.

Q. I mean is that fair?

A. No. Just what I told you. I don't know how to explain it any more than I did or better than I did.

Q. Did you not feel that you had an obligation to tell Wiley's lawyer and Wiley's relative, the person who had gotten you into this deal, there might be trouble with Fairchild?

A. I don't understand that question.

Q. I'm talking about Ingram now and your decision not to tel him.

A. I didn't understand. You said his friend, lawyer and his relatives. I didn't understand what you were talking about. Go ahead.

Q. My fault. Did you not feel an obligation to Ingram, Fairchild's lawyer and Fairchild's relative, to say Carroll, I just heard this shocking news from Wiley, he puts you in a possible blackmail scheme?

A. No, and I wouldn't have even mentioned it to Bud if I hadn't already been going out there. As I told you, apparently it was, he was satisfied that it was not true or something, or it would stop. Why should I go tell Carroll Ingram that? Why should I get over the backyard fence and start gossiping about it?

Q. You considered it gossip with Bud Holmes?

A. No. I used that term -- I don't mean gossip. I've explained to you four or five times to you why I didn't say anything to Carroll Ingram. I thought it was over with and there wasn't any necessity causing hard feelings or bad feelings between --

Q. Is Bud Holmes a man that is close friends, no doubts about that, right?

A. How many more times do you want me to tell you that? At that time, yes.

Q. Is there any doubt based on your relationship over the years that Bud Holmes is a person you could turn to for help?

A. Like any other close friend, no doubt about it.

Q. You had done favors for him in the past, he had done favors for you in the past, you had turned to him for help in the past, had you not?

A. In what respect?

Q. Well, in going to games together, or getting tickets for you, traveling together, hunting trips?

MR. FAWER: Excuse me, Your Honor. Would that be really defined as help? Man asked a question, and defines it in terms of going to ball games together. Is that help? I sat there thinking we were going to be talking about some sort of aide and help of some sort.

MR. WEINGARTEN: We'll get to that.

MR. FAWER: Let's try to be, if you're talking about help, give him an example of what you're talking about.

BY MR. WEINGARTEN:

Q. Do you want me to clarify, Judge? You want me to clarify that, or are you comfortable with the question?

A. I don't know exactly what you're talking about.

Q. You've accepted his generosity in the past, have you not?

A. Generosity I guess of a friend, as one friend would do for another. Can there be any doubt he and Carroll Ingram and others have been my friends for a long time? I've had many, many friends and I'm very proud of that. I value their friendship. If they were true friends.

Q. He has a relationship with your family, does he not?

A. What --

Q. He knows your family, knows your kids?

A. Yes.

Q. Has he employed one of your children?

A. Be more specific, I'm --

Q. I'm speaking of Bass Aviation?

A. Yes, my son Walter copiloted a jet plane for a while until it crashed trying to take off from the Baton Rouge airport filled with fuel because birds got in the engines one time. He worked for him a short period of time. I don't know whether it was just for him, but for whoever owned the plane he was copilot. I don't know that that was a favor; he employed him, paid him. Walter worked for it.

Q. Had you advised him of your interest in financial investments?

A. I don't recall advising Bud of that. I could have. I talked with quite a few of my friends from time to time, and I never asked Bud to my recollection to put me into any kind of business relation with him or asked him to invest with him, I never did.

Q. Has he ever lent you money?

A. No.

Q. Has he helped you with an addition to your house?

A. No.

MR. FAWER: We've gone about as far afield -- I'd like to approach the bench, Judge.

(At the bench:)

MR. FAWER: He's doing it again. Precisely, I'll be more precise. The allegations of Petit Bois is where he's reaching. You've -- God damn, I'm pissed off. I can't tell you how angry I'm getting.

MR. WEINGARTEN: I'm not bringing up Petit Bois.

MR. FAWER: With that blank face of his -- you know right where you're going.

MR. WEINGARTEN: Bud Holmes provided --

MR. FAWER: So what. Tell us this -- The judge has excluded it, the evidence, and --

MR. WEINGARTEN: You telling me I'm going to talk about Petit Bois?

MR. FAWER: I think you'll try to do what you can get away with, despite -- you know the feelings I have about what you will try to do, so they are very candid. I think you're about to try to do it now. I asked the judge for a ruling that you live with the 404(b) ruling of Your Honor. If you want to go close, what's I mean by close, within smelling distance, you come to the bench first.

MR. WEINGARTEN: I'll make a proffer. Judge Nixon put an addition on his house. Bud Holmes provided his contractor and fronting the money --

MR. FAWER: Fronting the money? Let's go off the record. Can we go -- and fronting the money?

MR. WEINGARTEN: For the contractor.

MR. FAWER: He didn't front -- that's your word, what do you mean?

MR. WEINGARTEN: Paid the guy.

MR. FAWER: Then why don't you say paid.

MR. WEINGARTEN: What's the difference?

MR. FAWER: I don't like your use of terminology.

MR. WEINGARTEN: The Judge understands what I'm talking about.

MR. FAWER: I'm not sure he does.

MR. WEINGARTEN: There is no negative --

MR. FAWER: I read it that way.

MR. WEINGARTEN: That's your problem.

MR. FAWER: Then let's go in some place where we can debate this, if you are, if you think this is not --

MR. WEINGARTEN: I don't think this has got a blessed thing to do with Petit Bois.

MR. FAWER: This falls right in the category, the judge has ruled that any favors that relate to the transaction, to the relationship were not germane. Your Honor, I ask you to recall your ruling. That's what this is, he's going into it. I will take your ruling out and show you how it covers four square --

MR. WEINGARTEN: I can make this very easy. Holmes is --

MR. FAWER: They can hear it. We shouldn't have it in the courtroom if you're going to make it loud.

MR. WEINGARTEN: Yours is much louder than mine.

MR. FAWER: I'm not talking about that subject.

MR. WEINGARTEN: Holmes is alleging that he's going this because he wanted to help his judge establish a financial relationship with Fairchild. That means --

MR. FAWER: I could hear it, not in this courtroom but in the next courtroom, too.

THE COURT: Go ahead.

MR. WEINGARTEN: Holmes has done financial business with the judge in the past, done him favors in connection therewith, at exactly the same time as the alleged phone call. Judge Nixon wanted to put an addition on his house. Bud Holmes provided the contractor, contractor was an employee of Bud Holmes' company. The contractor put on a 130 thousand dollars addition. For four months, monies were fronted by Bud Holmes.

MR. FAWER: Excuse me? There is an independent contractor who happens to be -- why don't you tell him, the father of Marcia. Your Honor has ruled on it. You've ruled all of this out. This is the Marcia, Bud's girlfriend, Marcia's father. He did Bud Holmes' private business. He also did some work for him. Charged both of them, there is no -- if somebody called a contractor with me, you said you needed a contractor, I recommended him to you and he did work for you. You passed on this issue.

THE COURT: Well, what I passed on was on the hotel rooms.

MR. FAWER: That's not true. You passed previously on the -- you want me to show it to you?

THE COURT: No, I don't want to see it.

MR. FAWER: You passed on it. He talked about it. He wants to develop the relationship, Your Honor. There was an addition by Marcia Bailey's father. The relationship -- you passed on it. I can show you your rulings.

MR. WEINGARTEN: This, does he know about him getting paid by Dud?

MR. FAWER: Why should he have to know?

MR. WEINGARTEN: If you tell me no I wouldn't do it.

MR. FAWER: I don't even know. What, do I have to question you?

MR. WEINGARTEN: All you have to do is tell me no.

MR. FAWER: If I knew the answer I'd give it to you. The point is it's irrelevant under any circumstances and Your Honor has ruled on it. If that is not what your ruling was I could have dealt with it on direct. Your Honor made the ruling. It clearly covered this four square, simple as that. The relationship, I sat back when he started going into the tickets for football games; that was part of the proof you ruled on already. You said that's not 404(b). Remember that?

THE COURT: I do.

MR. FAWER: But I let him go on, so innocuous. He's going a step further, there is no relationship and there is nothing here. I ask Your Honor to uphold your 404(b) ruling. That's what this is. If not, then I should have had the right --

if that's what you were going to do, we have tried this case on the thesis this is not admissible.

THE COURT: Get me my ruling, let me look at it.

MR. FAWER: Surely.

(Pause.)

MR. FAWER: Here's your ruling but it starts at Page 3.

THE COURT: I don't think that covered what we're talking about.

MR. FAWER: Sure.

THE COURT: You see what I'm talking about?

MR. FAWER: You have to go look at what their motion was. You didn't quote everything from their motion. Their motion under, I think it was -- you got to look at it because you dealt with it by excluding it all. What they had asked for was the ability to develop the relationship by showing these different favors to show the relationship of Holmes, and what you have to look at is their motion, because that's what this was all addressed to. You excluded everything.

MR. WEINGARTEN: No, that could be heard three courthouses down.

MR. FAWER: Wonderful. You excluded, there was a few at the end that were specific, the Wilkerson thing, Petit Bois was addressed particularly, but what you said is they had no right upon a stipulation of that friendship, nobody has disputed that, that's at Page 3, that they couldn't --

THE COURT: What is the relevance as to this particular evidence?

MR. WEINGARTEN: The relationship between the two men is absolutely essential to this case. At the time Holmes is alleged he made the phone call, for the very reason that he wants to puts Judge Nixon in good financial relationship with Nixon, he's doing other things. One of which is providing him with his contractor, the crew, and is paying for a period of four or five months that contractor and crew to put an addition on Judge Nixon's house. Judge Nixon, when the work is over, pays the contractor and the contractor reimburses Holmes, but for a period of four or five months --

MR. PAWER: What relevance did that have? You have, I want a full hearing on that if that's what is happening. Your Honor has led me to believe that's all inadmissible. I think this motion is inappropriate at this time. You have categorically ruled on this, and the only way -- he is only having the audacity to do this because you're hesitating on abiding by your ruling. He knows, he has taken here precisely what's he said in chambers to you: He thinks the relationship of them is relevant, and you said to him in this ruling, which I thought was a perfectly proper ruling, that the relationship cannot be expanded beyond the fact that they were friends. You said it there. We've stipulated, it has been questioned anyway, we even let him go beyond the stuff about the football -- you excluded that and we still allowed it in here. Now they want to go further. I haven't gone into this on direct. I haven't even bothered exploring it with the Judge because I don't have any reason to. I don't even know what the facts are. Man builds an addition on his home. What, is there anything improper? What has that got to do with their relationship? They go hunting together. You excluded all of that.

THE COURT: Well, I don't think it's relevant to this issue. I'm going to exclude it.

MR. FAWER: Thank you, Judge.

MR. WEINGARTEN:

Q. Judge I'd like to move to the interview that was conducted in your chambers in April, 1984. Is it fair to say that I advised you that the allegations basically were two-fold. One that there was an allegation that there was a mishandling of the Drew Fairchild case and two, there was a question about your financial relationship with Wiley Fairchild; would that be fair?

A. As I understood, the whole thrust of that interview was whether there was any connection or link between my transaction with Wiley Fairchild in 1979, early 1980 and the Drew Fairchild drug case that developed in August of 1980.

Q. Well, didn't we have an extensive discussion about --

MR. FAWER: Wait a minute, I take the position if you for thought this was a debate he shouldn't be trying the case because as a matter of ethics a lawyer is not allowed to put him in a position of being a witness and an attorney in a case. He knows that. Now the tapes if he had any problem with that, someone else should be handling this case because if he can pose his credibility standing at the podium with the witness here. We have a tape and if he thought there was a debate what was said before it or after and he should have recused himself or gotten someone else from the department. There's thousands of lawyers up there to try the case and I propose -- I object to him sitting here and standing here and asking any question at which he takes the slightest issue with what the witness said occurred in the conversation between the witness and the prosecutor. Now we didn't make up the rules as to who would question the judge. Reid Weingarten went in there. If he thought there was going to be something come up that would come up in this courtroom, the code of not judicial ethics the code that governs his conduct and mine says he cannot stand up here and question the witness.

MR. WEINGARTEN: I suggest nothing improper about asking a witness a question about an interview that was tape recorded that the jury has already heard.

MR. FAWER: Beg your pardon. He is asking not about the tape recorded interview he's asking that question about --

THE COURT: We have a transcript of the tape. There was a transcript.

MR. FAWER: Mr. Weingarten, you know you're asking him a question that precedes the beginning of the tape. It has to do -- excuse me, of what was said. The witness has testified when he was told in fact the initial name if you recall what Judge Nixon said when they sat down said this is concerning Reddett Fairchild he didn't know who Reddett was. He had to be told that was Drew, and went on to describe what Mr. Weingarten said before the tape was put on very brief. No one saying deliberate conversation after the tape was shut off. There was some further minor discussions concerning the documents and the production.

THE COURT: Read the transcript to him.

MR. WEINGARTEN: It's absolutely unnecessary.

MR. FAWER: Wait a minute. Are you asking him about what he said on the tape?

MR. WEINGARTEN: His recollection.

MR. FAWER: On the tape or the call?

MR. WEINGARTEN: On the tape. It's absolutely what I was intending. I think it was taken that way.

MR. FAWER: The question that had to be brought out is that he was -- what was -- describe the subject matter you announced before the tape was started.

MR. WEINGARTEN: That's not the tape. Did you take it that way, judge?

THE WITNESS: Yes.

MR. WEINGARTEN: I apologize.

MR. FAWER: Accept the apology. The witness read it the same way I did.

MR. WEINGARTEN:

Q. Judge, is it fair to say that only on the taped portion that's the only reference we'll make, the taped portion of the interview that 2 issues were discussed throughout. One was the handling of Drew's case and 2 was your financial relationship with Wiley?

A. No, that's not correct.

Q. You don't think that's fair?

A. There was a third issue which was the thrust of the whole thing and the focus of it whether there was any connection or link between the two because, you know, I wouldn't have mishandled Drew Fairchild's case. I had nothing to do with it at any time. I was a party to the mineral interest transaction and so you left out the most important part which I understood through all this 18 months almost two years has been the charge or allegation of this whole thing against me and is today.

Q. You understood that --

A. The focal point of the whole thing and there's not a thing to it and none of your witnesses have so testified.

Q. You understood that from the April 84 taped interview?

A. Yes.

Q. Did we not discuss the Drew Fairchild case in great detail?

A. You discussed all 3 matters.

Q. Including Drew's case?

A. Yes.

Q. In your mind at that moment did you recall the allegation by Wiley Fairchild?

A. What allegation?

Q. About Bud Holmes blackmail.

A. Complaint?

Q. Yes.

A. Yes.

Q. And you didn't volunteer it at that time?

A. No, I told you why not. I wasn't asked about it, Mr. Weingarten. Did you ask me?

Q. Absolutely not, judge.

A. All right. Let's be fair about it now. How could I, you know.

Q. Did anybody know about it other than you, Wiley and Bud?

A. I don't know.

Q. Well, did you tell anybody other than those two or did you talk about it with anybody?

A. I didn't.

Q. During the --

A. Whether they did or not I don't know.

Q. During April 84 did you mention the backdating -- April 84 meeting did you mention the backdating?

A. I think you asked about it and I didn't recall exactly why until I talked to Carroll when I called him and he reminded me. I immediately remembered it.

Q. Did you recall the delay?

A. And just as Carroll said here from the witness stand.

Q. Did you recall the delay in the April 84 meeting?

A. What delay?

Q. From the time of the verbal deal until the time you got the documents?

A. I said something was unorthodox if you remember the words about the transaction. That means out of the ordinary and I wouldn't remember what it was. I told you I would try to recollect what it was and think about it and I did and I told you what it was now and I think I told what it was in the grand jury.

Q. Is it your testimony --

A. To the grand jury excuse me.

Q. Is it your testimony that you told Whitespunner about the backdating and the delay when he came to your house a day or two later?

A. Whitespunner brought up the question of whether I had recollection what really was the unorthodox thing that happened and that's my recollection of what I told him. He didn't --

Q. What did you tell him?

A. He didn't seem fit to record it. I wish he had when he came by to pick up the papers so we'd have it of record as you did the other. I certainly would have permitted him to. And it was said in the past that he happened to mention that to me when he came to pick up the copies or the instruments. He brought it up again.

Q. He asked you what you meant by unorthodoxed?

A. I'd been thinking about it whether I recall what was meant by unorthodoxed. I don't remember whether he had instructions to ask any instructions from you or whether he asked it on his own or what the purpose is.

Q. Is it your testimony that you told Whitespunner what you meant by unorthodox; there was a backdating?

A. I didn't say backdating, no.

Q. What did you say?

A. I said there was a -- what I recall as being unorthodoxed was the fact that the agreement had been made a long time before the written instruments came and also that the written instruments, the royalty payments came a long time after the written instrument was entered into.

Q. So you told him 2 things?

A. Yes.

Q. Not just one?

A. Yes.

Q. And the two things are that the original deal was long before and the royalty payments came much later?

A. Yes.

Q. You didn't just tell him the latter?

A. No.

Q. After the interview, you spoke to Bud Holmes?

MR. FAWER: Which interview?

MR. WEINGARTEN: Interview April of 84.

MR. FAWER: By you or Ken Whitespunner?

MR. WEINGARTEN: Yes.

MR. FAWER: Which one?

MR. WEINGARTEN:

Q. The first interview?

A. Yes. I told you already. I called Bob, I called Carroll. I called George Phillips after I called Barbara.

Q. Did you call Wiley?

A. No. And I told you and Mr. Whiteespunner that I was going to make those calls if you recall, didn't I?

Q. Absolutely.

A. All right.

Q. You mentioned Mr. Goodman you retained a lawyer from Jackson to handle this matter for you; is that fair?

A. Yes I did. He was a business lawyer and a long time friend of mine and very capable lawyer. Retained him later.

MR. FAWER: May we approach the bench?

(At the bench).

MR. FAWER: Judge, I was very careful to make sure with the exception of the directions that Bill Goodman gave him in terms of listening to the questions in the grand jury and answer only what you're asked. I did not go into the attorney/client conversations between Bill Goodman and the judge. We would object if he were to go into the attorney/client.

MR. WEINGARTEN: I think he did. I want to see the transcript of it.

MR. FAWER: You just look at it. Go look.

MR. WEINGARTEN: I think I should be able to look at it now.

MR. FAWER: Be my guest. Before you have a right to go into an attorney/client conversation you better have a predicate for it. Even a judge has a right to have an attorney and have that said. All we did is describe the advice not his conversations concerning the oil and gas deal, not his conversations concerning Drew, not a word, and you won't find it.

MR. WEINGARTEN: Well --

MR. FAWER: Let me finish. There will be nothing. All we did is say attorney had recommended to him and directed him when he went to the grand jury to be responsive to the questions and answer what was asked of him period.

MR. WEINGARTEN: I think the answer talked about the phone call.

MR. FAWER: You are going into the subject matter of their discussion.

MR. WEINGARTEN: You did too.

MR. FAWER: I did not. I just told you what I did. Go to the thing and you find me where I did. I just told you what I did. I know precisely what I ask a witness.

MR. WEINGARTEN: I want to hear what he said.

MR. FAWER: Go read it.

MR. WEINGARTEN: That's what I'm asking for.

MR. FAWER: They have it or you need to find it. He my guest.

MR. WEINGARTEN: That's what I asked.

THE COURT: Have I you gotten the transcript from yesterday?

MR. FAWER: Why don't we go off the record.

(Off the record).

MR. WEINGARTEN: He elicited information about what advice an attorney gave to him.

MR. FAWER: Proper advice.

MR. WEINGARTEN: Proper advice, any advice, what's the difference?

MR. FAWER: Look, you show me where you have the right. Show me a case which says that I've opened the door and I think you have some ground.

MR. WEINGARTEN: I think you did.

MR. FAWER: That's fine. Until I can cite Weingarten on evidence and that's the last thing in the world I'd ever site I don't think you have a right to do it. I think you ought to be circumspect before you plunge into attorney/client relation.

MR. FAWER: You're puching your head right in it if you could and I don't know. It seems to me and this is just a word of advice but you don't have to take it but before you should ever ask a question of an attorney's conversations with a client you should approach the judge.

MR. WEINGARTEN: I didn't ask him that.

MR. FAWER: You were about to.

MR. WEINGARTEN: You're a great lawyer, Michael, but you're not a mind reader.

MR. FAWER: You knew that's what you're going to do. You told the judge that. Why didn't you approach the bench?

MR. WEINGARTEN: I can lay a predicate.

MR. FAWER: There was no predicate. You have never approached the bench on predicate.

THE COURT: Get on with it. It's a quarter till 5:00.

MR. WEINGARTEN: Why don't we break?

MR. FAWER: How much longer do you have?

MR. WEINGARTEN: Why don't we break and look at this issue. We'll finish him tomorrow.

MR. FAWER: And we'll go to the jury tomorrow.

MR. WEINGARTEN: We may have --

MR. FAWER: Argue the cases to the jury.

THE COURT: Can we?

MR. FAWER: Absolutely. We're done.

THE COURT: What other witnesses are you going to have? This is it?

MR. FAWER: That's right. This is it.

MR. WEINGARTEN: Are you going to have any rebuttal?

MR. WEINGARTEN: Yes.

MR. FAWER: Take 20 minutes, hour.

THE COURT: When are we going to get the instructions?

MR. FAWER: Let's go do it. Do it tomorrow morning either way. Do it tomorrow morning first thing.

THE COURT: Do you want to go ahead and do it later?

MR. WEINGARTEN: Yes.

THE COURT: After you've seen the transcript?

MR. WEINGARTEN: Well, no. I mean it doesn't make sense the issue arising now so I'd prefer to look at it now. I'm not going to finish either way. I'm sure if I collect my thoughts be quicker tomorrow.

MR. FAWER: If you're going to stop at 5:00 judge, he's not going to finish between now and 5:00. He's going to stay on the stand. I don't think there's any question. I think what we could do might be after you let the jury go if we could have a conversation for a few minutes at the very least.

THE COURT: All right. Ladies and gentlemen of the jury, we'll recess until 9:00 in the morning.

(Recess).

(End of Volume 16)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA

V. CRIMINAL ACTION NO. H85-00012(L)

WALTER L. NIXON, JR.

BEFORE: The Honorable James Meredith
Senior United States District Judge

DATE: February 7, 1986

PLACE: Hattiesburg, Mississippi

VOLUME 17

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THE COURT: Proceed.

MR. WEINGARTEN: Thank you, Your Honor.

MR. WEINGARTEN:

Q. Good morning, Judge. Judge, I just want to clarify a point or two about the interest that was paid to Wiley Fairchild. I believe your testimony on direct was that signing the notes February 25th or backing the notes to February 25th, 1980 obligated you to to pay one extra year of interest; is that fair?

A. Yes.

Q. When Fairchild charged you originally, when he tabulated the interest owing originally, he only calculated the interest back to February 25th, 1981?

A. Apparently so. We found that out later. Someone did, his office or someone made a mistake.

Q. And after the investigation started, he contacted you or contacted someone on your behalf and advised you of the fact that the interest had originally been tabulated from February 25th, 1981 and asked you to pay back to February 25th, 1980?

A. No. No, I received a letter from someone in his office advising me of the fact that they had neglected to charge me back to the actual date of the agreement February of 1980 and telling me how much was due. We calculated it and found out I was being overcharged at that but right away we sent a check for that 900 and some odd dollars to pay the interest back to that date and you were informed by us of that that fact as soon as it happened, right?

Q. Judge --

A. Do you agree?

Q. Please, judge. I'll ask the questions.

A. And we did inform you of that fact. All right.

Q. We won't quarrel about that.

A. No quarrel.

Q. Judge, did you know from the outset that Fairchild was charging interest to February 25th, 1981?

A. Charging what interest to February?

Q. 25th, 1981.

A. From February of 80 to February of 81.

Q. Excuse me. Did you know from the beginning of the transaction that Fairchild was charging you interest only to February 25th, 1981?

A. I don't understand your question.

MR. FAWER: Only to or only from?

MR. WEINGARTEN:

Q. Beginning from?

A. Only from?

Q. Beginning from?

A. Beginning from?

Q. Yes.

A. No, I didn't realize.

Q. Prior to the meeting wherein Fairchild makes the allegation about Holmes and Ingram, what's your best recollection of how many meets you had with Mr. Fairchild?

A. Two to the best of my recollection and I think that's correct.

Q. All right. How long would you estimate the first meeting was?

A. I really don't know. It wasn't a real long meeting.

Q. 15 minutes?

A. I really couldn't tell you to be honest. It wasn't very long when I went with Carroll. It might have been a little more than that.

Q. How about the second?

A. Second meeting, I'm just making a guess, but I would say not much more than that if any.

Q. And you recall no further meetings?

A. I called no further meetings?

Q. You recall no other meetings?

A. No.

Q. Can you estimate the number of telephone calls back and forth between you and Mr. Fairchild prior to the meeting where Mr. Fairchild makes the blackmail allegation?

MR. FAWER: Excuse me. I object the inaccurate statement of the prior testimony. The testimony has been given he alone is the only one who ever called Fairchild.

MR. WEINGARTEN:

Q. You recall no telephone calls from Fairchild?

A. That's correct.

Q. In your entire life from the time the transaction began until the blackmail meeting, how many telephones call would you have made?

A. I really don't know.

Q. 10?

A. I don't know.

Q. You just have no idea?

A. No, I'd say more than -- I really can't tell you. I'd be guessing. All I can tell you is that I did call him several times as he had requested.

Q. What would be the longest conversation as you recall? Would any of them been more than five minutes?

A. I doubt it very seriously.

Q. Did Fairchild ever make allegations against anyone before he made the allegations about Holmes and Ingram

A. Could you be more specific?

Q. Had he ever alleged wrongdoing by anyone else?

A. I can't recall that he had. If you'll ask me specifically maybe it will refresh my remembrance.

Q. I'm asking a general question if he ever made allegations against anyone before?

A. I think I just answered.

Q. And the answer is no?

A. The answer is I don't recall him making any but if you'll give me a specific instance or name perhaps it will refresh my memory.

Q. Did Fairchild ever talk nonsense before, prior to the blackmail meeting?

A. What do you mean by nonsense?

Q. What you meant by nonsense when you testified yesterday.

A. No, not that I can remember, but sometimes he's a hard man to understand. I say kind of sometimes talks in riddles. It's hard to understand exactly what he's trying to say and I don't belittle him in that respect but that's just the impression I got by talking to him the few times that I did.

Q. Well, you said yesterday I believe that you came to the conclusion that what he was talking about with reference to the blackmail allegation was nonsense. That's your word, isn't it?

A. I think we went over that about five times yesterday.

Q. Well, did he ever --

A. By nonsense I didn't think -- about the substance when he said that and the subject of who he was talking about, that's the conclusion I reached.

Q. Well, did you come to the conclusion about anything he had said on a previous occasion, the similar conclusion?

MR. FAWER: I think that question was just asked and answered.

THE WITNESS: I think I've answered your question.

BY MR. WEINGARTEN:

Q. Is the answer no?

A. Yes.

Q. What did you tell Carroll Ingram about the call -- excuse me. What did you tell Carroll Ingram about any conversation you may have had about the blackmail with Wiley Fairchild?

A. I didn't tell him anything about that.

Q. Did you tell him anything about contact, any contact you had with Bud Holmes pursuant to a conversation you had with Wiley?

A. Yes, I mentioned one time that I had passed something along to Bud Holmes that Mr. Fairchild had mentioned to me and that I think matters had been satisfactorily resolved or something to that effect in other words.

Q. Why did you tell him that?

A. Well, we were talking about the transaction I had entered into with Mr. Fairchild and it was paying off nicely, paying royalty, and we had talked about -- I had told him that Mr. Fairchild had mentioned to me about possible other investments at the party given for me as chief, reception given me as chief judge and it was in that context or connection and more or less in passing.

Q. Did you tell him --

A. Really had no significance of any kind. That's -- I remember just mentioning it in connection with the other matters I just mentioned.

Q. Did you tell Ingram that Mr. Fairchild had asked you to talk to Bud Holmes about Drew's case?

A. Absolutely not.

Q. And if Carroll Ingram testified to that effect head be mistaken?

A. Yes.

Q. Did you tell Carroll Ingram that Bud Holmes told you --

A. Unless Carroll misconstrued what I said.

Q. Did you tell Carroll Ingram that Bud Holmes had told you that nothing was going to happen in Drew's case?

A. No.

Q. And if Carroll testified to that, he'd be mistaken?

A. He would be.

Q. And did you tell Ingram that you had recorded --.

A. Of course, I could be mistaken but I don't remember Carroll even in his testimony stated that he didn't recall exactly what was said and he also stated that he just in general terms that he got a positive feeling that something satisfactorily had been done. That's my recollection. You may have a different recollection of what he said.

Q. Did you tell Carroll Ingram that you had reported that positive feeling back to Wiley Fairchild?

A. I don't think I did. I did tell him that I had -- it's possible but I don't believe I would have.

Q. But you're certain --

A. I what I recall telling -- what I recall is exactly what I told you previous.

Q. You're certain you never told Ingram that Fairchild had asked you to talk to Bud Holmes about Drew's case?

A. No. If Carroll says that, he misconstrued or misunderstood what I said.

Q. After the April, 1984 interview in your chambers, I believe you testified that you called Bud Holmes?

A. Yes.

Q. Did Bud Holmes have word of the investigation at that time?

A. Said he didn't.

Q. Did you ever call him back about the investigation?

A. No.

Q. Did he ever call you soon thereafter and talk to you about the investigation?

A. No.

Q. Did you see him in Biloxi soon after the interview?

A. I don't know whether I did or not. I'd see him occasionally in Biloxi and more frequently in Hattiesburg.

Q. Did you have occasion to see Bud Holmes between the interview and your grand jury appearance?

A. I really don't know but it's very possible.

Q. And on that occasion if you did, do you recall any conversation with him about the investigation?

A. No. Unless it may have been general, but I don't recall it. Never a mention of it I don't know.

Q. You testified yesterday about advice given to you by your attorney Goodman before you went into the grand jury; is that correct?

A. Yes.

Q. Did Mr. Goodman give you advice about the telephone call?

A. No, because the telephone call that you're making so muc about was really of no moment. It didn't -- we were talking about what we perceived to be the focus of the investigation, the Drew Fairchild case on one hand and the oil and gas interests that I had purchased from Mr. Fairchild on the othe and connection or link between the two and, of course, the phone call matter never came up because it was of no moment t me because it didn't relate to those matters. All it relate to as I've told you time after time is Mr. Fairchild's complaint about blackmail by virtue of the Fairchild name bei drug throuh the news media.

Q. Is it your testimony that you never advised your lawyer about the phone call?

A. When?

Q. Prior to the grand jury.

A. That's correct. And that's the reason I didn't. It was no significance, no moment.

Q. Do you recall being asked about your meetings with Wiley Fairchild in the grand jury?

A. Yes, I don't recall -- yes, I do.

Q. Government Exhibit No. 1. Judge, I ask you to take Government No. 1 and turn to Page 56. Please turn to Page 55.

A. 55.

Q. Yes?

Q. Just read to yourself and see if it's a fair statement that we were talking about meetings you may have had with Wiley Fairchild?

MR. FAWER: May I just inquire, are we talking on that one page or throughout, previous to 56? I just don't know.

MR. WEINGARTEN: Talking about 55 to give the judge an idea --

MR. FAWER: It's preceded by 55 pages.

MR. WEINGARTEN: Page 55 will give him an idea.

MR. FAWER: I think it ought to be understood by the jury that it's preceded by 54 other pages, you have picked out one --

MR. WEINGARTEN: I'm talking about 56. I think the jury will understand there were 55 pages before Page 56.

MR. FAWER: With other questions about the relationship of Wiley --

BY MR. WEINGARTEN:

Q. I'm asking, Judge, is it fair to say at that point in the grand jury that was a discussion about meetings you may have had with Wiley Fairchild?

A. At that point and many other points throughout the grand jury testimony, yes.

A. 55.

Q. Yes?

Q. Just read to yourself and see if it's a fair statement that we were talking about meetings you may have had with Wiley Fairchild?

MR. FAWER: May I just inquire, are we talking on that one page or throughout, previous to 56? I just don't know.

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BY MR. WEINGARTEN:

Q. I'm asking, Judge, is it fair to say at that point in the grand jury that was a discussion about meetings you may have had with Wiley Fairchild?

A. At that point and many other points throughout the grand jury testimony, yes.

Q. On Page 56, on line 3, is the question posed to you, "If the first meeting produced the deal, what would the other meetings have been for?"

A. I see that.

Q. And in your answer, did you discuss the meeting wherein Wiley Fairchild raised allegations of blackmail?

A. Did I raise what now?

Q. Did you respond with an answer that included information about the blackmail meeting?

A. I wasn't asked about any -- I wasn't asked such a question in the grand jury investigation. I was never asked about any complaint that he may have made to that effect. I wasn't asked about any phone calls.

Q. Were you asked what the other meetings would have been for?

A. Yes, I was asked that general question, first meeting produced the deal after I had told you on Page 55, beginning at line 9, when you asked, "February 1980, the deal is cut, what would have caused you to meet with Wiley Fairchild again before the effective date of the transfer?" I said, "I don't know of any reason. That's why I doubt that I did, but I --" "I don't mean to be obtruse." "How many meetings are we talking about?" I answer, ask "All together?" You said, "Yes," and I said, "I don't know, there was more than two. I don't think that were as many as five or four." You said "Just." I said "Somewhere in that neighborgood. I'd say two to five, probably." That's exactly, I've talked about three here.

Q. Then were you not asked if the first meeting produced the deal, what would the other meetings have been for?

A. I see that question. I see that question at Page 56 on line 3.

Q. Is part of your answer, I don't know of any reason I would have met with him after the transaction was finalized in the first part of 1980, but I can't say for sure, it's possible. At that moment, did you have knowledge in your head about your meeting with Wiley Fairchild when he alleged blackmail?

A. As I told you before, the complaint that he made to me --

Q. Is the answer yes or no?

A. The answer is that you never asked me.

Q. Is the answer yes or no, Judge? Did you have in your mind then when you said you had no idea, you don't know of any reason why you would have met with him, did you or did you not know at that point in time knowledge of the alleged blackmail--

MR. FAWER: I would just object. He's gone to the 7th line of that answer in which he has described meetings that took place after the deal was finalized, and then he picked up and asked -- look just at the middle of Page 13, am I correct?

MR. WEINGARTEN: Your Honor, I think this is an entirely appropriate inquiry.

MR. FAWER: I have no problem.

MR. WEINGARTEN: If he doesn't like my inquiry he makes a speech. I ask permission to proceed.

MR. FAWER: He has a full right to cross-examine, just like I've been afforded. It seems to me when he moves in and suggests to a jury, as if there hasn't been any answer given --

MR. WEINGARTEN: Your Honor, this jury has heard the entire grand jury transcript. I request permission to proceed.

MR. FAWER: May I finish? My objection is, he's being asked at a point he's saying did you know "X". What he's not letting the jury know is that the witness has already described meetings for 8 lines worth of transcript on that very subject. All I'm asking is he be fair. I don't think he's doing it intentionally, so the witness is put, it's put into context when he's asking a question which pulls out from the middle of an answer, that's all I ask.

THE COURT: Well, he can ask his question. Go ahead.

THE WITNESS: My answer to you was that as I stated, that is, that was given to you in the grand jury investigation was I met with him several times. And I related that one time he mentioned that he had overcharged me. And, he thought. And you never asked me the question that you're asking me now at any time in the grand jury, you never asked me any question that related to it. I answered the questions that you asked me, as I thought my answers were responsive, and certainly were truthful, every one of them.

Q. All right. The question I posed before, the objection, was when you gave this response on page 56, you knew that there had been a meeting between you and Wiley Fairchild where in Fairchild makes this blackmail allegation, is that true or not?

A. I knew that, yes. But it was of no moment for the same reasoning I mention to you earlier. It didn't relate to what you were really asking me about, the oil and gas transaction and its relationship or link if any to the Drew Fairchild case, and I answered those other questions you asked me throughout here and answered them.

Q. Was Wiley Fairchild mentioned in the grand jury?

A. Was he mentioned?

Q. Yes, were there questions about Wiley Fairchild?

A. Yes, I'm sure there were.

Q. Were there questions about Bud Holmes?

A. Yes.

Q. And were there questions about Carroll Ingram?

A. Yes. Many, varied questions about all of them, hundred pages of testimony, questions and answers.

Q. Contemporaneous with your grand jury appearance, did you issue a press release?

A. I never issued any press releases, Mr. Goodman may have.

Q. Did he do it with your authorization?

MR. FAWER: May we approach the bench then, Your Honor?

(At the bench:)

MR. FAWER: Once again, this might be relevant; I think once again the attorneys should approach the bench in advance. I don't think that he issued any press release. If the attorney did, he may have done it. Be that as it may, it seems to me you have to have some sort of proffer in which this becomes relevant to an issue in this case. I mean I just don't know that he did it or that he's going to be bound by what his attorney does in talking to the press. I mean I just don't know, I don't know enough about that press release.

Have you ever suggested this is something you were going to use in the case?

MR. WEINGARTEN: I didn't use this.

MR. FAWER: Have you ever suggested to me --

MR. WEINGARTEN: No.

MR. FAWER: Just so we understand it, I had no reason to deal with this problem. I suggest the inquiry as to what transpired is not appropriate in this case. I think -- Your Honor, look at what the press release says. I would like to see a copy, too, at some point.

MR. WEINGARTEN: You don't have it?

MR. FAWER: No, why would I bother?

MR. WEINGARTEN: You don't have that press release?

MR. FAWER: I don't have it in front of me. I don't have it in the courtroom. I don't know what the issue is.

What is its relevance? Is it inconsistent?

MR. WEINGARTEN: No.

MR. FAWER: If it's not inconsistent then how can you use it?

MR. WEINGARTEN: It's his statement.

MR. FAWER: What rule of evidence are you going to use it for, if it's not inconsistent?

MR. WEINGARTEN: I'll show you the rules, Mike.

(Pause.)

MR. WEINGARTEN: I guess you did have it in the courtroom.

MR. FAWER: I didn't though that I did. I didn't know that she had it. What are you offering this for? I'm curious as hell.

MR. WEINGARTEN: Giving notice to the world consistent with Bud Holmes' testimony. He's made a public statement as to what his position is.

MR. FAWER: Could you show me the rule of evidence this is going in on?

MR. WEINGARTEN: Yes, admission by a party opponent.

MR. FAWER: But you're telling me --

MR. WEINGARTEN: I can introduce any statement.

MR. FAWER: If it's not inconsistent. What is its admission --

MR. WEINGARTEN: Admission of any party opponent.

MR. FAWER: He's --

MR. WEINGARTEN: It's --

MR. FAWER: He's on the stand.

MR. WEINGARTEN: I can seek to admit it on --

MR. FAWER: Through what theory of relevance?

MR. WEINGARTEN: His public statement, he's explaing to the world he had nothing --

MR. FAWER: How did that become relevant? What's relevant what he says on that stand and what he says is inconsistent before.

MR. WEINGARTEN: If, we've been to other issues in the case, Bud Holmes' state of mind --

MR. FAWER: Excuse me, how does this go Bud --

MR. WEINGARTEN: Judge issues press release what his position is, that's consistent with what Bud Holmes --

MR. FAWER: You bring that -- listen to what he's doing, Judge. He wants to establish that Bud Holmes got his understanding of what the facts were from reading this or hearing it. The way to do that is through Bud Holmes, not through him. I mean this is simply and wholly consistent with what he said here and I assume Mr. Weingarten just conceded that, am I right?

MR. WEINGARTEN: Well --

MR. FAWER: Are you conceding that?

MR. WEINGARTEN: It's consistent with his position the grand jury and first statement, which we could have put in, too.

MR. FAWER: What makes this admissible at this point?

MR. WEINGARTEN: It's a statement by --

MR. FAWER: I want to you understand something. So you understand, the rule of relevance is the key rule.

MR. WEINGARTEN: I understand its relevance. The Judge -- obviously it's relevant.

MR. FAWER: Why is it relevant? If the man, let's --

THE COURT: Well, he did make this statement.

MR. FAWER: First, I don't know what his involvement in it is. I think it was issued out of the --

THE COURT: If he made the statement you can ask him about it.

MR. FAWER: Can I, I just think I ought to find out from him how this got prepared.

THE COURT: Well --

MR. FAWER: Okay, no problem.

(Open court:)

BY MR. WEINGARTEN:

Q. Judge, contemporaneous with your grand jury appearance, was a press release issued on your behalf?

A. I remember Mr. Goodman apparently released, had made a press release or gave a press release at some time. I don't remember exactly when it was.

Q. Why don't I hand you what's been marked Government Exhibit 287?

A. All right. I think the press can tell you I never made any press release or talked to them at any time during this matter. All right. I think this is, this accurately reflects what I read.

Q. Was Goodman authorized to issue that?

A. Well, he was my attorney, so I assume he was. I don't remember reading it before it was released.

Q. Did he do it on his own or did he do it with your authority?

A. I would assume that he did it with my authority. Made a release.

Q. Was that press release --

A. I would never accuse Bill Goodman of doing anything witho some authority.

Q. So it's fair to say he did have authority in this instance?

A. I would guess so.

Q. Was that press release issued?

A. What's that?

Q. Was it issued to the press? Was that release issued to t press?

A. I think this was what I read in the press.

Q. Was it widely covered?

A. I don't know how widely covered it was.

Q. Okay.

A. I read it when it came out in the newspaper, I know.

Q. Okay. Could I see that for a second?

A. What's that?

Q. Could I see it?

A. Sure.

Q. Is it fair to say, among other things, that you denied any, you said through this press release that you had absolutely nothing to do with any phase of the Drew Fairchild case?

MR. FAWER: Excuse me, Your Honor.

MR. WEINGARTEN: We move it into evidence.

MR. FAWER: I would ask it be read in toto. I join in the motion that that be made an exhibit.

MR. WEINGARTEN: I don't have to read it in toto. If you want to read it you can. I can use this exhibit any way I want.

MR. FAWER: Your Honor, under the doctrine of completeness, I have a right when a document goes into evidence, if a portion of it is used, that the jurors, the finder of fact, have a right to hear the whole document at the time.

THE COURT: Well, they are going to hear it.

MR. FAWER: I think they ought to hear.

THE COURT: Or you can bring it out on redirect.

MR. FAWER: My problem, understanding.

THE COURT: I know what your problem is, you want it read now. If he doesn't want to read it he doesn't have to.

MR. FAWER: Withdraw it, I'll take care of it later.

(Exhibit G-28 marked.)

BY MR. WEINGARTEN:

Q. Do you in the course of that press release deny any involvement in the Drew Fairchild matter?

A. I certainly did. And I certainly do.

Q. Now, let's move to February, 1985. Is there an occasion --

A. I think all of your witnesses have so testified. I don't know of a witness who has testified that I was involved, that I can recall who testified in this courtroom. You may want to correct me in that respect, but that's my recollection.

Q. Thank you, Judge.

A. You're welcome.

Q. February 1985, Bud Holmes calls your chambers?

A. What is that?

Q. You're conducting court in Hattiesburg?

A. Yes.

Q. Bud Holmes calls Your chambers?

A. Yes.

Q. And what did he ask you?

A. I don't know. He talked to my secretary.

Q. Did you call him back?

A. Yes, Bud ask I return his call, it was important and I did.

Q. What was the conversation?

A. On the phone?

Q. Yes.

A. He said he wanted to come see me, something very important.

Q. And how did you respond?

A. I told him I've got a jury out deliberating, come on up.

Q. What did he say?

A. He said he'd rather not with lawyers around there. He'd rather me come downstairs.

Q. Did you find that request strange?

A. Somewhat, yes, but knowing Bud Holmes, not as strange as might have been someone else. Go ahead.

Q. How did you respond to that?

A. I asked him why he couldn't come up here and he said he'd just rather not.

Q. And how did you respond to that?

A. He asked -- I think he asked me who the lawyers were in the case and I named them and when I named Frank Montague, I think he came with some explanative about Frank Montague and he didn't like Frank Montague apparently and he said he didn't want him to see him around here. Didn't even want to see him.

Q. So --

A. It was one of the lawyers.

Q. I understand.

A. And asked if I'd meet him downstairs where I parked my automobile always. It was a cool night, if I remember, pretty cool, sat in the automobile rather than standing outside.

Q. Why did you acquiesce to that very unusual request?

A. Why? He said it was very important that's why.

Q. Why didn't you say, Bud, there's nothing that we can't discuss in my chambers?

A. Well, that was what I said. That's what I did. I didn't know what it was about. No way for me to know what it was about until I saw him because he didn't say anything over the telephone what it was about.

Q. So you left your chambers and went downstairs and met him at his car?

A. That's right.

Q. And it was dark out?

A. Yes, the jury went out well after dark.

Q. Was anyone else there?

A. No.

Q. Just you and Holmes?

A. Yes.

Q. In March, 1985, Bud Holmes was indicted; was he not?

A. I think that's when it was. About that time.

Q. And is it fair to say that prominent in the indictment is an allegation that there was a phone call from his farm to Wiley Fairchild wherein you participated?

A. That's what was in the indictment, yes.

Q. At that point, did you contact the Government and say there's a terrible misunderstanding about your understanding about that phone call?

A. Did I contact you?

Q. The Government, anybody in the Government?

A. No. And you didn't contacted me at any time about it either at that time.

Q. At that point?

A. At that time.

Q. Did you seek to come back into the grand jury and say, there's a terrible misunderstanding about this telephone call?

A. Mr. Weingarten, you know if you'd have wanted me back from the grand jury you could have subpoenaed me. No one is above the law or should be above the law and if you had wanted me back at any time, all you had to do was issue a subpoena and you didn't do that and the reason you know you didn't do it I think to be honest is you were intent on indicting me, not having me go back before the grand jury and ask me about that telephone call.

Q. Judge Nixon, you also knew, did you not, that all you had to do was pick up the phone and say I want to appear before that grand jury and just like you volunteered the first time you would have been welcome back?

A. And didn't you know that you could have subpoenaed me? You subpoenaed all other three witnesses back. You subpoenaed Bud Holmes back, you subpoenaed Carroll Ingram back and you subpoenaed Wiley Fairchild back and asked them about that and gave them the opportunity to talk about it, but you didn't see fit to subpoena me back because all you were intent on doing was indicting me and you know it.

Q. Did you volunteer to come back, judge? Did you come back? Did you volunteer to come back?

A. It was quite apparent to Mr. Goodman and me at that time what your intention was that you had targeted me and that you were going to do it me come hell or high water.

MR. FAWER: Excuse me. I sat back and watched it go on. Seems like end up in an argument between the two parties to be untoward in view of the fact that the prosecutor really in effect is a witness to those events.

THE COURT: Well, if the witness wants to answer he can. All he can say he didn't go back.

MR. FAWER: He said that. Anything goes beyond that becomes an argument.

MR. WEINGARTEN:

Q. Did Mr. Goodman communicate to the Government the fact that there was a terrible misunderstanding about the phone call?

A. You'll have to ask him that. Apparently not because he and I were of the definite opinion then what I just stated that you were intent on indicting me. If you wanted me back, what was to prevent you from subpoenaing me just as you had done everybody else. I was not above the law and am not above the law and should not be be above the law but I should be entitled to the same consideration as any other citizens. I should be given the same consideration that you gave the other 3 when you asked them to come back and explain that. You didn't indict Carroll Ingram for it and you didn't indict Wiley Fairchild for it.

Q. Did you communicate to anyone in the Department of Justice other than me that there was a terrible misunderstanding about this telephone call and you wanted to clear it up?

A. Been the same thing as telling you. You were their representative.

Q. You were aware, of course, that there are a great number of superiors above me?

MR. FAWER: Excuse me.

MR. WEINGARTEN: This is perfectly appropriate.

MR. FAWER: You're a witness. We're now engaging in a debate what was communications between a lawyer who's now examining the witness and the witness that is as I understand it the code of ethics untold. You should not have a situation where a lawyer is questioning a witness about facts where there's a potential for that lawyer's own credibility his own awareness of the facts to be involved.

MR. WEINGARTEN: I'm not asking the judge about any conversations he had with me.

MR. FAWER: Not a case of asking conversations. There are accusations that have been made by him concerning your conduct. I mean that's sort of being very clear if they are it's their pitting your conduct against his and the power of this podium is not as I understand it under the code of ethics governing lawyers to be used in that context and I object to that being done in this case. I know the judge can handle himself in terms of this inquiry but it's not proper that he be permitted to go on in this vein.

THE COURT: Overruled.

THE WITNESS:

A. I think I've answered your question.

Q. I want to make sure that you did. You're aware, of course, there are a great number of superiors above me in the Department of Justice?

A. Yes, I would assume so.

Q. You're familiar with the structure in the Department of Justice, or not?

A. Not exactly but pretty much so generally.

Q. You understand --

A. Never made a study of it, never been a part of it but I have a general idea.

Q. Did you ever contact anybody else in the of Department of Justice and claim that there was a terrible misunderstanding about this telephone call?

A. You're the one who was representing the Department of Justice in all this matter --

Q. Can you answer?

MR. FAWER: May he be permitted to finish his answer? May the witness be permitted to finish?

THE COURT: Yes. You can explain.

THE WITNESS:

A. You were the representative of the Department of Justice in this matter. You were the one who was investigating this matter apparently. You were the one who came to see me in the interview in April of 1984. You're the only one I really had ever any contact with directly or indirectly as the dual authorized representative of the Department of Justice and you're the one that was -- you were the Department of Justice with respect to this matter as far as I was concerned. I assume that you had authority from your superiors to be doing what you were doing.

Q. And the reason you never communicated anything was because it was your conclusion that even though the telephone call was completely innocent that we were intent on indicting you?

A. I think I answered your question.

Q. But Holmes pleads guilty in June and basically is it fair to say plea guilty to lying about the telephone call so as to cover it up?

A. Well, the plea speaks for itself.

MR. FAWER: Excuse me. I would object. There never was a plea to the perjury. They washed the perjury count out.

MR. WEINGARTEN: Object to the mischaracterization. The perjury count was dismissed.

MR. FAWER: The information is in evidence. I'm sure the jury knows what he pled to.

MR. WEINGARTEN: It's a contempt charge that the man pled guilty to. If you will recall 25 years potential.

MR. WEINGARTEN: Object to speech by this counsel in the middle of my cross examination.

MR. FAWER: Only trying to correct the misimpression that you're making.

MR. WEINGARTEN: Making a speech to the judge to prejudice the jury as you've done from the outset of this trial.

MR. FAWER: I think the jury will ultimately make the -

MR. WEINGARTEN: We'll see.

MR. FAWER: The point of the matter is begging Your Honor's pardon for the colloquy between counsel but the fact is being misrepresented. There was no plea to the perjury count. They were dismissed. All 5 of them. Thank you.

MR. WEINGARTEN: I never said perjury. Characterized the charge --

MR. FAWER: As lying concerning the telephone call he did not plead to that.

MR. WEINGARTEN: Your Honor, I request permission to proceed.

THE COURT: Go ahead.

MR. WEINGARTEN:

Q. Was Bud Holmes's guilty plea in connection with the telephone call?

A. I wasn't there. I don't know exactly what took place. If you'll let me see what you're talking about, I'll look at it again and be in a better position to answer your question. You should know exactly what he pled guilty to because you drew the information I assume when you dismissed the 5 felony counts.

MR. WEINGARTEN: Could I have the contempt please? The information. 22.

MR. WEINGARTEN:

Q. I hand you what's been marked Government Exhibit 22.

A. I've read it now.

Q. Were you familiar with the content of the information back in June of 1985?

A. I became familiar with it later when I read it in the newspaper.

Q. Did you read about it in the newspaper soon after the plea?

A. I would think so.

Q. And did you become aware that Bud Holmes's guilty plea had nothing do with a telephone call from his farm?

A. Well, let me read it. It's charged in here that from on or about July 18, 1984 and continuing through March, 1985 that he committed acts of misbehavior in the presence of the grand jury and committed those acts so near to the grand jury as to obstruct the administration of justice and charged that he inquired of others whether they discussed a telephone call with federal authorities so as to be able to tailor his own grand jury testimony and that he testified falsely in the grand jury on February 21, 1985. That the reason he did not advise had grand jury about the previous aforementioned as he said telephone call previously was and in quote it did not come across my mind and quote didn't put any significance to it. And C, refused to disclose the substance of the above telephone call and falsely testified before the grand jury that he could not remember what was said during the call. So he had testified previously under oath that he didn't mention the call because it didn't come across his mind and he didn't put any significance to it and he also pled guilty that he falsely testified one time before the grand jury previously that he could not remember what was said during the call. So apparently he has testified at least two different ways under oath before the grand jury and lied before the grand jury. So to answer your question, I guess that's it.

Q. Judge, when you became familiar with the contents of the information, did you relate it to a telephone call that was made out at Bud Holmes's farm when you were present?

A. According to the news media, I think it was related to that after it appeared in the news media. It seemed like some reporters were getting some information from some source although a gag order had been issued. They sure weren't getting it from me. I don't know where it was coming from whether it was coming from Bud Holmes or somewhere else. I don't know.

Q. Is it fair to say you've been represented in this matter by counsel at least from your grand jury appearance?

A. Yes.

Q. As it fair to say your counsel has been in communication with the Department of Justice?

A. I would think so.

Q. Is it fair to say your counsel prior to your indictment went to Washington, DC on several occasions?

A. Yes. I don't know about several occasions.

Q. Judge, do you ever commute back and forth from Biloxi to Hattiesburg in a day?

A. Oh, yes when I have court up here usually. I will sometimes commute. It depends on whether we have anything to do at home or depends on the health of my family. It depends on what time we finish court in the afternoon for the day and matters of that type, but after a couple of days if I'm holding any extensive court up here, I don't do it because it's very tiring. It's about a 2 hour drive roughly to Ocean Springs because it's about I'd say close to a hundred miles from this courthouse to my home each way and you have a speed limit of course of 55.

Q. There have been occasions when you would leave Biloxi in the morning, take care of some business and come back, take care of some business in Hattiesburg and go back to Biloxi in the same day?

A. Yes. I just explained to you.

Q. Thank you.

MR. WEINGARTEN: Could I have Mr. Holmes's calendar?

MR. WEINGARTEN:

Q. Judge, I hand you Government Exhibit 20 which has previously been identified as a calendar. Ask you to turn to first October 20th, 1982.

A. All right.

Q. Is that a Wednesday, sir?

A. Yes. According to the calendar it is.

Q. Is your name listed as a visitor to the D. A.'s office on October the 20th?

A. Yes.

Q. Did you visit the D. A.'s office that day?

A. 5:00 in the afternoon is where the name appears. I can't tell you whether I did or not on that particular day. Of course, that's over three years ago. I can't relate it to any certain event.

Q. Was that the week of Bonnie and Clydes party for you? Do you recall?

A. Yes. No, it was the week before.

Q. Were you in Hattiesburg holding court for a couple weeks in October?

A. I don't recall. I would be happy to answer it if you'd give me something that I could look at. I'm sure you have some information. If you do, please give it to me.

Q. I thought you might have an independent recollection?

A. I know I was up here during the week of the reception. Whether I was here two weeks or not I don't know. If I was, I was. If the records show that I was.

Q. Show you Government Exhibit 29. Is this a calendar of yours, Judge?

A. Appears to be my handwriting, I don't know many handwritings that are as bad as that.

Q. Okay?

A. Except some bankers I know, doctors.

Q. And prosecutors too, Judge. How about the week of October 18?

A. All right, it shows that I had, quote, on Monday October 18th, Hattiesburg calendar at ten, two weeks.

Q. Do you have an independent recollection of visiting Bud Holmes at the DA's office on October 20th, 1982?

A. No. It's possible I did. I don't know. No independent recollection.

Q. Do you have an independent recollection that you did not?

A. Don't have any recollection.

Q. Would you take a look at Friday, July 10th in Holmes' calendar. I think you're looking at yours, Judge.

A. I'm sorry. July 10th, okay. All right, I see Saturday, July 10th.

Q. I'm sorry, I think it's July 16th.

A. July 16th? All right.

Q. Is your name listed there?

A. Yes.

Q. What time?

A. Three o'clock.

Q. Do you have an independent recollection or visiting with

Bud Holmes on Friday, July 16th, 1982?

A. No, but I don't have any independent recollection. I've told you I visited with him fairly, you know, several times. I've told you that previously.

Q. Is there any way that your calendar --

A. He would visit over here, but we didn't keep a calendar when somebody came by to visit us, of course.

Q. It's possibly you did, possibly you didn't?

A. What's that?

Q. Possible you did visit with him on that occasion and it's possible that you didn't?

A. Yes.

Q. Is there anything in your calendar that helps determine whether that's accurate or not?

A. On July 16th? Says Hattiesburg pretrials at nine-thirty on Friday, July 16th.

Q. And finally, would you look on Holmes' calendar, my writing again is scribbled -- June 20 something. June 24th.

A. Yes, my name appears, two-thirty p. m.

Q. And again --

A. On Thursday, June 24th.

Q. Do you have any recollection of visiting Holmes on that occasion?

A. No. One way or the other, I don't.

Q. Would you check and see if your calendar helps at all?

A. All right. This calendar does not, no.

Q. Does that calendar give any evidence of where you might have been at that time?

A. My calendar does not, no.

Q. Okay. Do you recall any occasion in 1982 when you would have been to Bud Holmes' farmhouse?

A. In 1982?

Q. Yes.

A. I don't know. I could have.

Q. You just don't recall?

A. I don't recall.

Q. Do you recall any occasion in 1982, particularly with reference to the three dates I gave you, or any other occasion, when you would have seen Bud Holmes and Wiley Fairchild on the same day?

A. No.

Q. Do you recall any occasion in 1982 when you would have had contact via the telephone or in person with both Bud Holmes and Wiley Fairchild?

A. I don't recall. Could have, but I don't know.

Q. You could have?

A. I don't know. I don't know one way or the other. If you have any information, show it to me and I'll be happy to look at it, if you have any records of that.

Q. Judge, turkey season in Mississippi is in the spring?

A. Yes.

Q. Is there also one in the fall?

A. No.

Q. Just in the spring?

A. Yes.

Q. Was there ever an occasion when Bud Holmes brought back to his farm some turkeys that you had killed?

A. Yes.

Q. And when was that and under what circumstances?

A. Best I recall it was in 1983. I can't pinpoint the time. I'm not sure about it, it could have been another time, could have been another year, but that's my best recall on it.

Q. How did it come about that Mr. Holmes brought back turkeys to Hattiesburg that you had killed?

A. I've been trying to think about that since you had asked me about it, since I was asked about it, and I never did go turkey hunting with Bud Holmes to Warren County, we never went together. I think I was up there and he came up with someone else, but I think he came up to fish, because Bud Holmes couldn't turkey hunt. He doesn't have the patience. He doesn't care or know a thing about it. He bird hunts, he's an avid bird hunter, and I think that's about all, but as far as deer or turkey hunting, if I would turkey hunt with Bud Holmes, I would want to put on him the other side of the turkey from me. He would certainly chase the turkey over to me.

Q. Might be dangerous if he shoots, Judge.

A. Who, Bud?

Q. If he's shooting at the turkeys.

A. I don't think he would ever get close enough, let a turkey get close enough to him to get a shot at it.

Q. What caused Bud to bring back turkeys for you?

A. I don't know. I seem to recall I left early for some reason, I don't know, either I left early, I had killed the turkey the last day I was there and was leaving, the turkey hadn't been cleaned or something. I don't recall exactly what it was. So he was going to bring it back, I was going to pick it up on my next time I was in Hattiesburg or came through sometime later, I don't know when. I don't think there was any specific time.

Q. Did that in fact happen?

A. Yes.

Q. And when was that?

A. My best recall was it was 1983.

Q. Would it have been before or after the Hank Williams incident when you were out at his house to get the records?

A. Best I recall it was sometime in the first half of 1983, but it was not the time I went out to get the Hank Williams records.

Q. How certain are you that it was in 83? Could it have been in 82?

A. I don't think it was.

Q. You certainly --

A. You asked my best recall and that's my best recall.

Q. You turkey hunt every year when you can?

A. Yes, I do -- I don't hunt in all these places I mentioned to you every year, I wouldn't have time to. It varies from year to year, and I might go a few times. I love, that's really my way to relax. I guess some people relax fishing, and some relax doing other things. I grew up hunting with my dad, and I love it, I love the camaraderie, being with people I hunt with. I love to get out into the woods where it's quiet, and I love the challenge of the hunt.

Q. The date now, Judge. You can't be more specific to as to the date of the turkeys?

A. No.

Q. There was an incident, however, when turkeys were killed, Bud brought them back to your house and picked them up?

A. I thought I answered that question. If you want me to answer it again, yes.

Q. Was there an occasion when you visited Bonnie and Clyde's with Bud other than the party in October, 1982?

A. Yes. I told you that yesterday.

Q. I don't believe you told me.

A. I might have told Mr. Fawer then when I testified here already.

Q. How many occasions have you gone to Bonnie and Clyde's? More than two?

A. I'd say possibly. Not many more.

Q. On every occasion was it with Bud Holmes?

A. I don't believe so.

Q. On any occasion was it with Bud Holmes?

A. Yes.

Q. How many occasions with Bud?

A. I don't know.

Q. Well, how many can you recall, what can you recall right now as you sit on the witness stand?

A. I don't recall exactly, Mr. Weingarten. It wasn't many. I think it was probably more than one, though.

Q. When would it have been?

A. When, I don't have any dates. I know I was, I can't sit down and remember a date I went there.

Q. What would have caused you to go to Bonnie and Clyde's with Bud Holmes?

A. He and Jim Dukes owned Bonnie and Clyde's. When they would want to go have a drink after work or something, and a snack or something, that's the logical place. Also it was a nice place I thought.

Q. You had gone with Bud to Bonnie and Clyde's more than once?

A. Yes.

Q. Did you ever go to Bonnie and Clyde's with Bud from his home?

A. I don't know. It's possible that I did. I don't remember any circumstances that I would have, however, because his home was out in the country, but it's possible.

Q. It's possible that there would have been an occasion you were out at his farm and the two of you came back into town and went to Bonnie and Clyde's?

A. It's possible.

Q. Do you remember an incident, do you remember being at Bonnie and Clyde's an occasion when you later learned that there had been an altercation?

A. I think I do. I heard it later, yes.

Q. What did you hear?

A. I heard that there had been an altercation.

Q. Involving who?

A. Involving Bud's girl friend and his secretary.

Q. And did you learn, or did you hear, excuse me, that the altercation had taken place on the same evening when you were at Bonnie and Clyde's?

A. I don't know whether I recall that or not. I don't want to tell you one way or the other. It may well have been, but I'm not sure.

Q. What do you recall?

A. I remember that I had heard about an altercation in Bonnie and Clyde's involving his girl friend and his secretary. I don't recall it having happened when I was there, though. I know it didn't happen when I was ever there, and I don't know whether I was told it happened after I was there or not, on the same night or anything like that.

Q. How do you associate it? When did you hear this information and who did you hear it from?

A. Gee, I think it was quite common talk around Hattiesburg.

Q. Do you know when this was?

A. Best I recall it was 1983.

Q. Why do you recall that?

A. I just recall that because it wasn't that long ago.

Q. Same way you recall the turkeys in 1983?

A. I don't know what you mean.

Q. Well, the same power of recollection that places the turkeys that Bud brought back in 1983?

A. It's difficult to remember at this time whether something happened in what year, but that's my best recall that it was in 1983.

Q. And do you recall that you would have heard about the altercation on an occasion when you were in Bonnie and Clyde's?

A. I don't recall that I did. You mean when I was in Bonnie and Clyde's one time someone told me Bud's secretary and girlfriend had had a fight there?

Q. No, that you received this information that there had been an altercation on the same evening, but after you left?

A. I don't recall that.

Q. Judge, would it be proper for a federal judge to influence a state prosecutor to go easy on a drug smuggler because the judge had a financial relationship with his father?

MR. FAWER: Let me just -- you know, I know the Judge can handle himself. What has that got to do with this case?

MR. WEINGARTEN: Everything, Your Honor.

MR. FAWER: So wait, so we understand. He's putting a question to the Judge concerning the propriety of trying to influence a state case, Judge. He knows that can't be the official act in this case, so I would suggest it's doing nothing more than trying to walk an argument he wants to make to the jury before them. As I understand the law as Your Honor is giving it, that can't be a crime as alleged in this indictment.

MR. WEINGARTEN: It certainly can be a motive.

MR. FAWER: Excuse me, a motive?

MR. WEINGARTEN: Motive. You might have heard of that.

MR. FAWER: My name is Mr. Fawer to you.

MR. WEINGARTEN: I'll call you anything I want.

MR. FAWER: Could we have a little more decorum from the gentleman?

THE COURT: He can show that for the purposes of showing intent.

MR. FAWER: I understand that, that's my point. I suggest that solely for that reason and therefore Your Honor needs to give a charge at this point, or at least advise the jury that any discussion between the judge and someone like Sid Holmes, not suggesting it occurred, there was any discussion about the case, but should it have occurred that couldn't be a federal crime. They need to know that.

THE COURT: Well, I think you've told them now on several occasions.

MR. FAWER: So long as Your Honor acknowledges that is the law.

MR. WEINGARTEN: Would you like me to repeat the question?

THE WITNESS: Yes.

BY MR. WEINGARTEN:

Q. Would it be proper for a federal judge to influence a state prosecutor to put in a good word with the state prosecutor on a drug smuggler's case because the judge had a financial deal with his father?

A. That a hypothetical question?

Q. Is it a hypothetical, Judge?

A. I'm asking.

Q. Isn't that exactly what you did in this case?

A. Absolutely not. You know I didn't.

Q. Isn't that exactly what --

MR. FAWER: I want --

THE WITNESS: You know I didn't.

MR. FAWER: Excuse me, sir.

THE WITNESS: That is a lie.

MR. FAWER: May I get between here someplace? Judge, I know it's nice to end up with a good question; it seems to me it's simply argumentative.

MR. WEINGARTEN: Your Honor, the fact Michael Fawer is objecting to a question because it's argumentative is breathtaking.

MR. FAWER: Breathtaking or have you lost your breath?

MR. WEINGARTEN: Takes my breath away.

MR. FAWER: Then I withdraw my objection, because obviously there is no more breath to use for the next question.

MR. WEINGARTEN: No further questions.

THE COURT: Redirect?

MR. FAWER: Thank you, Judge.

## REDIRECT EXAMINATION

BY MR. FAWER:

Q. Why don't we begin by reading, can I read Government Exhibit 28 to the jury, please?

MR. FAWER: Ladies and gentlemen, this is dated, statement of Judge Walter L. Nixon issued by William Goodman at Hattiesburg, July 19, 1984, one p. m.

BY MR. FAWER:

Q. First of all, Judge Nixon, you testified on July 18th, am I right?

A. Yes, that's my recollection.

Q. And immediately upon -- you had come in from a vacation with your family, is that correct?

A. Yes.

Q. Did you return to that vacation?

A. Yes.

Q. That same day?

A. Yes.

Q. So on the 19th of 84, where were you?

A. I was in Destin, Florida.

MR. FAWER: Okay. Reads as follows.

(Reads Exhibit G-28.)

BY MR. FAWER:

Q. End of statement. Let me just turn to a few other subjects. First, with respect to -- with respect to the information that you looked at, when I say the information, the bill of information filed against Bud Holmes in 19, June of 1985, is that right?

A. Yes.

Q. Does that information, even that information make clear that Bud Holmes, even in February of 1984, had been called ba and had been given an opportunity to respond to questions concerning that telephone call?

MR. WEINGARTEN: Objection. Leading, Your Honor.

MR. FAWER: You're right.

BY MR. FAWER:

Q. From the -- did, Judge, according to that bill of information, that Mr. Weingarten questioned you about, was Bud Holmes brought before the February 21st, 1985 grand jury?

A. Yes.

Q. And was he, according to that information, questioned specifically about the telephone call?

A. Yes.

Q. Thank you. Were you ever given the same opportunity? Yes or no?

A. No.

Q. Thank you. You've been asked a couple of questions, let me clear this up before we go on. You indicated that on occasion when you were sitting in court in Hattiesburg you would commute, is that correct?

A. Yes.

Q. By commuting, when would you mean -- when would you leave from Biloxi?

A. I'd leave in time to get here to start court, nine, nine-thirty or ten o'clock. In other words, I'd have to leave no later than eight o'clock, and usually earlier than that, have to get up quite early to get everything ready.

Q. When you say commute, would this be during a period when you would be sitting during a period of two, three, or four days?

A. Yes.

Q. When would you return in the evening?

A. After court, whatever time we recessed for the day.

Q. If you were not sitting in Hattiesburg, do you ever recall coming up to Hattiesburg just for the day in a non-court setting?

A. I don't recall that.

Q. Okay. Go ahead --

A. I've come up for doctor's appointments at times or dental appointments.

Q. What's the name of your dentist?

A. Doctor, I had Dr. Lowrey Faler was my periodontist.

Q. Aside from that, any other time that you can ever recall doing it?

A. No, unless I was passing through.

Q. I wasn't talking about that?

A. No.

Q. I asked you specifically, Judge Nixon?

A. No.

Q. Whether from Biloxi to Hattiesburg you returned?

A. No.

Q. Just turned to what you raised. I take it however on occasion any time you were traveling one of the more distant locations, you would pass through Hattiesburg?

A. That's correct.

Q. Without belaboring it on May 14th as I understand it, the court record places you I think it's Defendant's Exhibit 30 hearing motions at 10:30 in the morning in Biloxi; is that correct?

A. May 14, 1982?

Q. 82.

A. Yes.

Q. You testified the rest of your day was spent in preparation for the asbestos litigation beginning next Monday?

A. Yes.

Q. Did you spend any time that day in Hattiesburg?

A. No.

Q. That would have necessitated a 2 hour trip to Hattiesburg and returned that day?

MR. WEINGARTEN: Object to leading questions

THE WITNESS:

A. Yes.

Q. Would that have necessitated a the 2 hour trip from Biloxi to Hattiesburg?

A. Yes. Two hours each way approximately two hours.

Q. Do you have -- I understand that you do go turkey hunting on a rather regular basis in the spring of each year, correct?

A. Not regular basis but I do go whenever I can get away and I usually try to block some time off to turkey hunt during that 6 week period.

Q. 6 week being March and April period?

A. Yes.

Q. Of each year. This occasion that he --

A. 5 or 6 weeks. I don't remember which.

Q. Those are the parameters of the turkey hunting season?

A. Yes.

Q. During the cross examination and in fact on direct, you mentioned that there was an occasion when Bud Holmes took a turkey home for you and kept it; is that correct?

A. Yes.

Q. Was there any reason -- tell the jury if there was any reason why you had to rush that you had to get that turkey within a certain period of time?

A. No, as a matter of fact, I think it was a pretty good while before I did.

Q. Where was the turkey being -- what condition was the turkey being kept at Bud Holmes?

A. Freezer.

Q. You think you got it the same year?

A. I think so.

Q. About how many months after?

A. I don't know but it was a pretty good while.

Q. And your best understanding of what your best recollection of what year that was?

A. 1983.

Q. Two other points. As I understand, you described without going over it you believe that your first meeting with Wiley Fairchild was sometime shortly after the verbal agreement had been entered into in 1980; am I correct?

A. Yes.

Q. You've heard Carroll Ingram testify here?

A. Yes.

Q. He as I understand it places that conversation or that meeting sometime shortly after the --

MR. WEINGARTEN: Object to endless stream of leading questions. Mr. Fawer knows better.

MR. FAWER: Excuse me, Your Honor. It is leading but that is simply setting a predicate for the question and I don't think there's any dispute is there that's what Carroll testified to.

MR. WEINGARTEN: I object to leading questions.

THE COURT: Sustained.

MR. FAWER: That's fine.

MR. FAWER:

Q. Tell the court when did -- was your understanding of what Carroll Ingram stated the date was of the first time he introduced you to Wiley Fairchild face to face?

A. As I recall, Carroll's testimony was to the effect that he thought -- he wasn't sure that it was either shortly before or shortly after the formalization of the agreement in 1981. The written agreement. After it had been reduced, that is after the agreement had been reduced to writing.

Q. With the exception of the dating of that, as far as you recall was there any difference in what your recollection was and his with respect to what took place at the meeting?

A. No, not that I perceive.

Q. With respect to backdating, you're a judge federal court, right?

A. Yes.

Q. You are also a lawyer in Mississippi?

A. Correct.

Q. Under the law of Mississippi is backdating a perfectly appropriate legal act?

A. Yes, definitely.

Q. Are there cases to your knowledge that so hold?

A. Yes. I don't recall the style of the cases offhand but I have -- there are cases that have so held. Mississippi Supreme Court opinions.

Q. When you said the style of the case, that means the name of the case?

A. Yes, name of them. I'm sorry.

Q. That's all right. One other thing. You indicated I think Mr. Weingarten started his questioning by showing you your I believe it was your net worth?

A. Yes.

Q. For Defendant's Exhibit 40 for -- I take it back your financial statement, private financial statement you submitted to the bank as of December 31st, 82, correct?

A. Correct.

Q. And from what I understand, you testified that the -- let me just sidetrack for a minute. Are the judges disclosure reports that we have entered into evidence Defendant's Exhibit 40 I think and 38 each year are those made public?

A. Yes. As I previously stated, a copy of them, executed copy is required to be filed with the clerk's office of the district court. In our district it's in Jackson. They are public record for anybody to see who wants to go look at them and the news media does go and look at them every year which I think is good. They report the judges' assets. All the judges' assets and liabilities and they rank the judges for some reason rank us with relation to who is the wealthiest and who is the poorest and I think the last such report that I saw was no longer than a month ago I think when Ms. Guth Ingram reported this in the Sun Herald in Biloxi. The local paper.

Q. I take it that is a degree of publicity that comes with being a federal judge? I mean the average private citizen doesn't get rated that way; is that correct?

A. Yes.

Q. Let me just show you this document for a minute. It's this financial statement in which as I understand you're familiar with financial statements you submit them to banks, right?

A. Yes.

Q. This financial statement is a little different format than the one that goes to the Government?

A. Yes, that other is a financial disclosure report. It's different. It's not the same as a personal financial statement.

Q. And as I understand it according to this, Mr. Weingarten was pointing out that your net worth was $723,000 and change according to the statement?

A. Right.

Q. Are you enough or an accountant or enough of a business background to know what the definition of net worth is?

A. Yes.

Q. What is net worth?

A. Net worth as I understand it is the difference between your assets and liabilities.

Q. Does --

A. Either have a minus or a plus net worth.

Q. Go to the head of the class.

A. Thank you.

Q. Does net worth in any way reflect the cash available to an individual?

A. Definitely not.

Q. When I say that, the 700, okay. I withdraw that. Do you on this document break down -- the jury will have the document in evidence which are the assets which are liquid which would mean readily convertible into cash, right?

A. Yes.

Q. And which are not?

A. Yes.

Q. I've looked at this document and with the exception as I see it you have on it real estate. That is an asset you had, right?

A. Correct.

Q. And the value there is reflected as $322,000, right?

A. Yes. 500.

Q. Let's round it out.

A. All right.

Q. There are a couple of automobiles, two or three automobiles?

A. Yes.

Q. That's 33,000 you have there?

A. Yes.

Q. You have other assets which I have -- on a schedule, correct?

A. Correct.

Q. Reflecting personal property such as household furniture, correct?

A. Yes.

Q. And an interest in a building called Nixon Enterprises; is that right?

A. Yes.

Q. That's a building you've been trying to sell for a number of years?

A. Yes.

Q. That is not cash? That's a building, right?

A. That's correct.

Q. And that you in addition have life insurance cash surrender value of 39,000?

A. Yes, if I wanted to cash it in.

Q. The only other thing as I see it is your -- excuse me, the oil and gas investments are included in the 342, right?

A. Correct.

Q. Those 4 investments that we're talking about; is that right?

A. Yes.

Q. When I say the 4, the Fairchild investment, the Pattison investment, the Point Coupee investment and the Geo Southern at that time?

A. Yes.

Q. And in addition to that, you have approximately just under 99,000 in stocks that you mentioned the drug stock and the bank stock you got from your mother's estate, right?

A. Yes.

Q. Is it fair to say or you tell us is all of that in basically with the exception of the stock in nonliquid assets?

A. What we talked about, yes.

Q. How much did you have in the bank?

A. $23,412.38.

Q. So do I understand correctly that which is not in hard assets in terms of tangible property, all you had was your bank account at 23,000 and the stock which was paying you some dividends; is that right?

A. That's correct.

Q. The rest of it is all land or other personal; is that right?

A. That's correct.

Q. And turning to the other side of the page, you had loans and liabilities of over 136,000; is that right?

A. Yes.

Q. So there was no $700,000 available to educate your children, was there?

A. I should say not.

MR. FAWER: Excuse me one moment, Your Honor.

THE WITNESS: I might say, Mr. Fawer -- all right.

MR. FAWER:

Q. Judge Nixon, just one final question. You've already testified concerning each of the counts in this case. As you sit on this stand, do you view in your own judgment any of the conduct you engaged in in terms of being in the oil and gas venture anything you did thereafter in this matter as having been improper?

A. No I don't.

MR. FAWER: I have no other questions. Thank you.

MR. WEINGARTEN: No further questions, Your Honor.

THE COURT: Thank you, sir. You may step down.

MR. FAWER: Your Honor, I think there are some documents that need to be just offered in evidence. I don't think there's any problem beyond that.

THE COURT: We'll recess until 1:30. The jury may go ahead and retire while we take the documents.

(Jury out).

MR. FAWER: Judge, we would offer at this time Defense Exhibit 38 which is the Nixon financial disclosure report for 1980, 39. A list of his other oil and gas investments, 40, disclosure report for 81, 41 which is a disclosure report for 82, 42, Defense Exhibit 42 which is the clerk's record of March 10th through 11th, 1983 in the case Chico Versus Patterson. The rest I believe are all everything else is in. And the only thing we need to do is simply I think Defendant's Exhibit 32 we ask to substitute. This is the telephone call from Pat McMullan. And for the record, since the newspaper seemed so intent on reporting this there was an error made by me. I alluded to it used his name. He has a brother named Paul McMullan. And I used the name Paul McMullan questioning the witness rather than Pat which resulted in 2 box headlines in the paper, the Hattiesburg paper and apparently just want to go on record saying it was Pat McMullan not Paul. My slip of the tongue. Everybody recognized it at the time. It has no bearing in the case. But in any event, we had agreed that the exhibit would be just this limited portion that conversation Defense Exhibit 32. We would ask that we substitute that limited portion for what went in and the same thing for 32-A which is just the limited portion of the telephone conversation of that day be 32-A. What we have on 32 is the tape of 32-A.

MR. WEINGARTEN: What was 32-A originally?

MR. FAWER: Much longer transcript?

MR. WEINGARTEN: The whole transcript of the call.

MR. FAWER: I don't know. The whole whole transcript a much longer portion.

MR. WEINGARTEN: I think so.

MR. FAWER: I don't mind it you got some other -- you're talking about the whole call.

MR. WEINGARTEN: I want to see what 32-A was originally.

MR. FAWER: Sure. Just the vulgarity of it. That's what they talk about what they do at the farm. If you want that that's fine.

MR. WEINGARTEN: I do.

MR. FAWER: That's fine.

MR. WEINGARTEN: We'll agree.

MR. FAWER: We'll take care of working it out.

MR. WEINGARTEN: Something will be admitted and be 32-A and be a transcript.

MR. FAWER: That's fine.

THE COURT: Do you have any objection of the exhibits?

MR. WEINGARTEN: No. Move into evidence 27, 28 and 29 if I not already have.

MR. FAWER: Let me see what they are.

MR. WEINGARTEN: 27, 28 is the press release and 29 is the calendar.

MR. FAWER: 27, 28 is his calendar.

MR. WEINGARTEN: No.

MR. FAWER: I mean 29 is his calendar, right? And what was the other thing?

MR. WEINGARTEN: the press leases.

MR. FAWER: I have no objection.

THE COURT: They may be received. Is that all of your exhibits?

MR. FAWER: I believe so. That will take care of all the exhibits. There is something we want to talk to him about. Let's discuss it before I rest. That's fine. Mr. Weingarten wants us to have some discussion in chambers if that's satisfactory unless you want to wait until we come back.

THE COURT: Does the defendant rest now?

MR. FAWER: It concerns this issue -- the defendant is prepared to rest. There may be some question that is raised in this issue which I'm aware that Mr. Weingarten wants to discuss with the court that could impact on that decision. I don't think it will, but I think my answer to you is going to be yes that we'll rest as soon as we come back.

THE COURT: All right. Let's go.

# EXCERPTED WITNESS TESTIMONY

## CARROLL INGRAM

Q. Has a personal relationship developed between you and Judge Nixon?

A. Well, to some extent there has, yes.

Q. What extent is that?

A. Well, I think down through the years as I have practiced law here in this community I've gotten to know Judge Nixon and I think he has got to know me and so I have talked with Judge Nixon on occasions when he was not in the court. I've had lunch with Judge Nixon when he was not in court. I've had dinner with him. I think he's been in my home one time for a reception and maybe one other time. Other than that I think I went to a reception or a social occasion in his home in Ocean Springs on one occasion.

Q. Have you discussed matters with Judge Nixon above and beyond your business in court?

A. I certainly have.

Q. Has Judge Nixon discussed with you his financial situation?

A. He has indeed.

Q. And what has he said?

A. Well, sometime back when I was in the senate, I've had occasion to talk with Judge Nixon when he discussed with me the financial limitations of being a federal judge and the burden of a large family and the necessity for him to have developed outside income.

Q. Did he indicate that fact to you more than once?

A. Well, as I mentioned a moment ago back in 1979, which was the last year I served in the Mississippi Senate, I had an occasion to visit with Judge Nixon when he expressed to me his concerns about his limitations of financial income, and his general discussion that he would like to do as some of his colleagues had done on the bench, and that's have an opportunity or an occasion to make investments in oil and gas properties.

Q. Did the general discussions ever become more specific?

A. They did.

Q. When and how?

A. Well, I would say sometime during the year of 1979 and probably later toward the end of the year he specifically asked me about the possibility of making an investment in oil properties with Mr. Wiley Fairchild.

Q. Who mentioned Wiley Fairchild first?

A. Judge Nixon did.

Q. What did he say about him?

A. Well, he just said that some of his colleagues on the bench had had occasion to make investments in oil and gas properties and he would like to be in that -- in a position to do so if that could be done.

Q. What did he say about Mr. Fairchild specifically?

A. I don't recall that he said anything specifically about Mr. Fairchild. He knew that I represented Mr. Fairchild down through the years and had that relationship with Mr. Fairchild.

Q. Did he indicate why he wanted an oil and gas investments with Wiley Fairchild?

A. I'm assuming, Mr. Weingarten, that that would be the only person that he knew that I had any kind of a contact with or a relationship with, but that's an assumption on my part.

Q. Did he mention anything about Wiley Fairchild's business acumen or success in the oil and gas field?

A. Yes, there was discussion about that. He admired his success in that, and so does everyone else admire his success in that. He's done very, very well in the oil and gas business and has for a number of years.

Q. Did you have any knowledge of a relationship between Judge Nixon and Wiley Fairchild prior to the time Judge Nixon made the request of you?

A. I didn't have any knowledge of any relationship there.

Q. What was your reaction to Judge Nixon's request?

A. Well, my reaction to it was that he had made that request of me, and I was somewhat reluctant and delayed in my passing that request along.

Q. Why?

A. Well, I think that you're kind of on the spot about that when someone asks you to put them in an investment or put them in a relationship with someone that you have a relationship with. He's a federal judge, he's on the federal bench, I'm a lawyer in this community and in this state. So that was the context of the reluctance on my part.

Q. Why didn't you just say no if you were reluctant?

A. Well, I certainly think that that was one of the options that I had, but I don't think that just because someone is on the federal bench that that precludes him from making a legitimate investment and for seeking to make a legitimate investment, and so when I saw it in that context, even though I felt on the spot about it, felt reluctant about it, I didn't see anything improper about talking to Mr. Fairchild about it.

Q. So did you eventually contact Mr. Fairchild?

A. I did.

Q. How long a period of time elapsed between the first request and the contact?

A. Several weeks, possibly months.

Q. In the interim period did you have contact with Judge Nixon?

A. I surely did.

Q. What was the nature of the contact?

A. The contacts were brief and casual, maybe by the telephone or seeing him at some place and he would ask me about whether or not I had made contact with Mr. Fairchild.

Q. How many such conversations were there?

A. There were more than one. I don't know how many there were, Mr. Weingarten, but there were more than one.

Q. What's your best testimony on that?

A. Well, my best testimony was that there was more than one. I could say several, I could say three or four. That would be something that would be reasonable.

Q. Did you take all of Judge Nixon's calls at that time?

A. I'm not sure that I took all of his telephone calls at that time. I didn't at at a later time.

Q. At that time did you avoid his calls?

A. If I didn't avoid them, I knew that that was a part of the call that was coming, and I knew that I hadn't talked to Mr. Fairchild and I didn't have any news to give Judge Nixon.

Q. Is that in fact what happened?

A. Beg pardon?

Q. Did that in fact happen?

A. What?

Q. That you avoided the calls for that reason?

A. I would say yes.

Q. What's your best sense of when the specific request for Wiley Fairchild was made?

A. My best sense is that it was made in late 79, late 1979, maybe early 1980.

Q. And when is your best sense as to when you approached Mr. Fairchild?

MR. FAHER: Excuse me. You just asked him.

BY MR. WEINGARTEN:

A. Okay. The instruments were delivered to my office in February or March of 1981.

Q. How did that come about?

A. That came about when Mr. Fairchild had prepared the instruments and sent them to my office.

Q. And did these instruments correspond with the information Mr. Fairchild had provided to you before?

A. No, they did not because in the instruments that he sent to my office at first, those instruments did not contain the acreage that he had identified to me in my original conversation with him.

Q. And the conversation would have been how long before you got the original deeds?

A. Several months before that. A long period of time. In fact, a long period of time had elapsed since the properties had been identified and the investment had been agreed upon until the instruments were delivered to my office.

Q. Well, if you got the instruments late February, 1981 or early March 1981?

A. That's correct.

Q. See if that can help you identify when Wiley Fairchild first provided you with the information.

A. Well, as I have just got through saying to you, I believe that he provided that information to me sometime in early 1980.

Q. Well, would it be a year that passed?

Q. Well why was that significant?

A. Well, I think it's significant in many, many occasions that the deed or the contract or the writing which you have try to reflect an appropriate time when the transaction took place, when the agreement took place.

Q. Was there any concern on your part that the value of the mineral royalty interest could be very different in 1981 than 1980?

A. Yes, indeed.

Q. And what was your concern?

A. My concern was that if this agreement was made, which it was, some several months before the deeds were delivered to my office, then oil properties are many times volatile, so, the value in those properties could change significantly in a matter of a few months, so it would be important for the date to be placed on them.

Q. Did you ever know whether or not the values of these wells changed significantly over the months?

A. I did not. And I do know. The value of these minerals were set by Mr. Fairchild. He told me what the value was. I did not know what the value was. If the value was something different, then it was for, his responsibility to tell me that.

Q. What arrangements were made with Judge Nixon to pay for these interests?

A. The arrangements were made for Judge Nixon to pay for those interests by an indebtedness, evidence of an indebtedness by notes.

Q. How did that come about?

A. That came about when Mr. Fairchild identified the properties to me and identified the values, and I passed that to Judge Nixon. I told Judge Nixon about that, told him that there would be a requirement of a payment of ninety-five hundred dollars for those transactions, then Judge Nixon's response was I need for you to give me some advance time to know about that, because I'll have to make arrangements for my payment on that. I passed that word to Mr. Fairchild, and he said that he would be glad to advance, to make an advance of that to Judge Nixon, to carry the paper himself.

Q. Did you testify that Wiley Fairchild set specific amounts for the mineral royalty interest?

A. He set the total amount.

Q. What?

A. He basically set the relative value of the particular properties in his discussions with me.

Q. And when would that have been?

A. That would have been when he identified the properties to me.

Q. Did Judge Nixon indicate to you an amount that he was interested in spending?

A. It could have been that at some time in our discussions that Judge Nixon gave me a range of the type of investment he was making, but no, he did not give me a specific amount.

Q. What range would he have spoken of?

A. I don't even have a recollection of a range, but I know that when the value of minerals were set at ninety-five hundre dollars, that was in that range.

Q. By the way, did Judge Nixon ever discuss other minerals investments he was making?

A. He told me that he was attempting to make other mineral investments, and he was either going to make them or had made them.

Q. When did he mention that to you?

A. End of 1979, 1980, all along in this time.

Q. When he first raised the possibility of an oil and gas investment with you, did he indicate to you that he had other investments?

A. I have the sense or the belief that he did have other investments, but he didn't say, hey, I've got minerals over in Clark County or Wayne County or somewhere like that, but I had the sense that he did have other investments or he was making other investments.

Q. How did it come about that notes were prepared?

A. Well, when the deeds were delivered to my office, then I prepared the notes in my office to conform to those deeds.

Q. So you actually prepared the notes?

Fairchild?

A. Yes, I was aware of that. Sometime after this agreement had been reached between the two of them, Mr. Fairchild said that he would like to have coffee with Judge Nixon at sometime when it was convenient to do so. I said that to Judge Nixon and sometime later Judge Nixon and Mr. Fairchild had coffee at Mr. Fairchild's office.

Q. And what do you recall about that meeting?

A. Well, it was a meeting where I believe I met Judge Nixon and Mr. Fairchild out at the office. It happened in the morning time about 11:00. Was about a 20 or probably about a 20 minute meeting. It was a time when they had coffee, a time when they expressed pleasure about this transaction that they had done and they visited together.

Q. Could you tell whether or not this was the first time the men had met?

A. No, I could not tell whether or not it was the first time that they had met. I don't know of their having met personally before, but it wouldn't be unusual or I just wouldn't know whether they had met personally before that or not.

Q. You couldn't tell from the greeting?

A. Not really. I didn't have that --

Q. Was there a time when the two men were alone?

A. Yes, there was a time they spent alone. I excused myself and allowed them to visit. It was primarily their visit, not mine.

Q. To your knowledge was there further contact between Judge Nixon and Wiley Fairchild?

A. Yes, there was. I was aware that Judge Nixon and Mr. Fairchild were talking with each other on the telephone. I don't know on what kind or basis of regularity that was, but I got the impression that it was occasionally that they talked on the telephone and may have even met personally together without my knowledge. I know that they did have contact after that.

Q. Did it ever come to your attention that Wiley Fairchild and Judge Nixon had contact about Drew Fairchild's case?

A. Yes, it did. Sometime in the late fall of 1982, Mr. Fairchild told me that he had asked Judge Nixon to talk to Mr. Holmes about Drew Fairchild's case.

Q. What else did he say to you?

A. Said that Judge Nixon had talked to him and Judge Nixon had confirmed that he had talked to him.

Q. And did he get any result from Judge Nixon?

A. Well, the results that he indicated to me were that the results were positive that he had in fact talked to him and that those results were positive.

Q. In what sense positive?

A. In a sense of well being that Drew Fairchild's case was going to be okay.

Q. And where did Wiley Fairchild say he got this information?

A. Said I got it from Judge Nixon.

Q. Do you have personal knowledge of Drew Fairchild's case being passed to the file?

A. Well, I know it was passed to the files the latter part of December, 1982 and sometime after it was passed to the files, the district attorneys office, Mr. Holmes, gave me a copy of the order that passed to the files and asked me to send it to Mr. Fairchild and I did.

Q. Did the information you received from Mr. Fairchild about his contact with Judge Nixon come before or after the case was passed to the file?

A. Came before the case was passed to the file.

Q. Did Judge Nixon ever discuss with you his involvement of Drew Fairchild's case?

A. Judge Nixon did not discuss with me because I'll qualify the term discuss. But Judge Nixon did indicate to me that he had talked with Mr. Holmes about Drew Fairchild's case and that he had -- he told me that.

Q. Did he indicate to you why he had spoken to Duc Holmes about Drew Fairchild's case?

A. Because Mr. Fairchild had asked him to.

Q. And did he indicate to you anything that Mr. Holmes may have done or said about Drew Fairchild's case?

A. The indication was that he talked to Mr. Holmes about it and that Mr. Holmes was -- I would say that Mr. Holmes would give consideration to his request. There was a good feeling or a good positive reaction to that.

Q. Did Judge Nixon indicate to you why he had gone to Bud Holmes?

A. Well, no, he didn't indicate why he did. He just told me that Mr. Fairchild asked him to.

Q. Did he indicate to you why Mr. Fairchild asked him to?

A. Mr. Weingarten, I'm not sure he did. I'm not sure he did indicate to me why he went to Mr. Holmes.

Q. Was this conversation with Judge Nixon by telephone or in person?

A. It was by telephone.

Q. Do you recall where you were during the conversation?

A. I think I was at my office, but I'm not absolutely sure about that.

Q. And do you recall who placed the call?

A. No, I do not. I sure do not.

Q. How was the conversation how did it begin? How did the subject come up?

A. Well, in the context of talking with Judge Nixon, he just simply indicated to me that he had talked to Mr. Holmes about Drew Fairchild's case. That was really -- it was really a passing comment, an understated thing that wasn't a full discussion about it.

Q. Did it pass into something else?

A. Oh, I'm sure it did. Whatever the subject matter we were talking about. I'm sure it did pass into something else.

Q. Did the subject matter have anything to do with Wiley Fairchild?

A. Now I don't know that. It very well could but I don't know that.

Q. Contemporaneous with that conversation had you been having other conversations with Judge Nixon about Wiley Fairchild?

A. Certainly I have.

Q. What were those conversations about?

A. Concerning his relationship with Mr. Fairchild. They were talking on the telephone. I had the impression may even be seeing each other, but I didn't know that, didn't inquire about it. Judge Nixon and Mr. Fairchild were working on other possible mineral transactions, mineral purchases.

Q. And did Judge Nixon make any request of you in connection with other possible investments?

A. No, he didn't make any request of me, but I think that he wanted me to be favorably informed and advised about it. I didn't view it as necessarily a request for me to go do something about it, but I think that he wanted me to be in the posture of being helpful to him if I could.

Q. Well, do you recall testifying in the grand jury that he did request of you to be of assistance in further transactions?

A. If I testified to that, then I certainly did testify to it.

and that is not inconsistent with what I'm telling you now. Judge Nixon did not on a second occasion say to me hey, I want you to go specifically and talk to Mr. Fairchild about another mineral transaction. Not one time did he do that. But I think there was an underlying, pending feeling that their first transaction had been successful and that he certainly wanted me to be in a position that if I could be of assistance to him to be that way, but now he didn't specifically ask me to go and perform a mission for him and that is not in my judgment inconsistent with what I've testified in the grand jury and if it is, I want you to read it and let's talk about it. I'm certainly not trying to deny anything --

Q. Mr. Ingram --

A. -- that I said in the grand jury.

Q. You can refresh your recollection to your prior testimony.

A. I understand that and I'm willing to have my recollection refreshed, but I also want some fairness, too.

Q. Would you like to see your grand jury --

MR. FALER: Is this your course? Is this a lecture? Apparently there's a debate going on on rules of procedure by your witness. I guess I don't have standing because the witness can handle himself. I don't know what this is now into. Is there a question on the floor at this point?

MR. WEINGARTEN: I'm about to pose one.

THE WITNESS: In the grand jury --

for the references from Judge Nixon and Mr. Fairchild which were sketchy and I didn't have a complete scenario of the telephone call, that was news to me. Mr. Holmes was telling me something I didn't know about.

Q. And what did Mr. Holmes say about it?

A. Well, he basically told me about the telephone call and about how it occurred that it occurred at night told me that. He told me the basic content of the telephone call. He asked me if I thought that Mr. Fairchild taped the telephone call and I responded to him that I had no way of knowing whether or not Mr. Fairchild taped the telephone call and didn't know whether or not he taped it that that wasn't something within my knowledge.

Q. What did he say about the content of the call?

A. Well, the content of the telephone call was that Judge Nixon called Mr. Fairchild from his home and that he said that Judge Nixon told him he had spoken with Mr. Holmes about Drew Fairchild's case and the substance of it was that things are going to be okay. Everything's going to be all right in his case. He didn't have anything to worry about or something to that nature.

Q. Did Bud Holmes express any concern about the call?

A. Well, surely he expressed concerned about it that's why he asked about it.

Q. Did he indicate how he recalled the context of the

A. I think that's correct, yes.

Q. First of all, let me ask you this, I don't think it's been asked. Tell the jury whether there was any connection whatsoever in your mind as you sit there now from 1979 to this minute, is there any connection whatsoever between that oil and gas transaction between Wiley Fairchild and Judge Nixon and the Drew Fairchild case?

A. None whatsoever.

Q. Have you made this clear to the government since day one?

A. Since day one.

Q. Have they looked at you with some incredulity when you tried to tell them of this?

A. Well, I don't know how they look at me. I have told them that from the beginning.

Q. Okay. You have no doubt about that, am I correct?

A. I have no doubt about that.

Q. To your knowledge, did Judge Nixon, when he called you on April 19, tell you that that was the thrust of what they had been questioning him about that day?

A. There was not a real long discussion between Judge Nixon and I in April of 1984. By the way, that is the last time that I have talked to Judge Nixon since that time.

Q. About this matter?

A. About this matter, because I felt that that was inappropriate to do so. And not for any other reason, but it was told how many acres to put on that original deed?

A. I was not present when Mr. Fairchild gave Mr. Jarvis instructions about these deeds.

Q. You're positive about that?

A. As positive as I can be about it.

Q. Fine. We're, so as I understand it, Wiley now calls you, in effect tells you, you know, I'm still offering the deeds, right?

A. That's right.

Q. Let me stop you for a minute. At that point in time, had Drew Fairchild had been to your office in November of 80' as I understand?

A. That's correct.

Q. As far as you knew he had worked out some plea agreement with the federal government on some problem he had?

A. That's correct.

Q. At any time did it ever cross your mind that this transaction between Judge Dixon and Wiley Fairchild had anything whatsoever to do with Drew Fairchild's matter?

A. Absolutely not.

Q. As far as you know, did Wiley Fairchild ever think of the two in the same context at any point in time?

A. If he did, he never expressed it to me.

Q. Okay. If I understand correctly, did you know -- by the way, when you went to the grand jury, or at any time, did you that was the first time that they met?

A. It seemed that way, but it wasn't I want to meet Judge Nixon but I want to have a cup of coffee with Judge Nixon, okay.

Q. In any event, you knew nothing from either one of them to suggest that they had in fact met before but nothing concrete that said this is our first meeting?

A. That's correct. The truth about it is Mr. Fairchild is a public figure and in essence in the business and industrial world and Judge Nixon is a very prominent federal judge. It wouldn't be unusual for them to have met at any number of occasions before that. I wasn't trying to say that that was their first meeting, but it very well could have been. If it was, it was.

Q. There's nobody is concerned particularly about that, but what I would like to ask is there any way that you're able to state that whether that came after the verbal agreement but before the formalization of the documents or did that come after that? I mean is there any way of dating let's say between the beginning of 80 and the end of 81? I mean do you have any way of putting a date on it?

A. I cannot absolutely nail it down but I can give you what I believe occurred. I had first thought that that meeting took place after they had verbally agreed upon this transaction and that they meet soon after that. Once I got to looking at the statement that they got filed?

A. Sure.

Q. You arranged by the way, the Judge -- the beneficiary signed the documents?

A. Sure, he does.

Q. Do I understand correctly what you see here in terms of the Nixon interest they're always three zeros before the first digit which would be a 5 in all of these wells which would mean, would it not, that his interest is five, ten thousandths or something?

A. Whatever they are, yes.

Q. Well, I mean the decimal point does indicates that it's five, thousandths, right?

A. Yes.

Q. During the year in the year 1982, I take it you were aware that there are -- well, let me ask you. Do you come to learn now -- I mean whether the wells are successful, whether there's money coming in on one or more of them?

A. I do come to know that.

Q. From whom?

A. From somebody. From Judge Nixon or from Mr. Fairchild or someone. I learned that there is some production.

Q. Do you get the sense from Judge Nixon that he's pleased with the investment?

A. I do.

A. Certainly he did.

Q. We'll come to that.

A. Okay.

Q. Are you upset about my questioning you right now because I got the impression that you wanted to tell me that.

A. Am I upset about your questioning?

Q. Yes. Are you upset about my questioning you about this area?

A. I am upset about those questions, okay.

Q. I'm sorry.

A. And if you've got to question me about that, that's fine. I'm willing to answer them.

Q. I want you to be comfortable. You understand I have to do this okay?

A. Okay.

Q. Now Judge Nixon as well in the same some point in time mentioned to you that Wiley had asked you to speak to Bud, you confirmed that he did that, correct?

A. That's correct.

Q. Is it fair to say, Mr. Ingram, wasn't said any secretive way, he wasn't telling you about this furtively or any of that sort. He just told it to you in the course of a conversation?

A. That's right. He did.

Q. When Wiley told it to you, it was the same way, right?

A. Certainly.

some occasion casually Judge Nixon mentioned that Wiley actually talked to Bud about and he had done it, fair statement?

A. Yes.

Q. That there was question of the grand jury as to what that -- can you tell us any more about that and as I understand it, that's all there was just the sense that a message had been asked to be communicated, the Judge had done that at the request of Wiley Fairchild period; am I right?

A. Well, that's basically correct and I think I have testified and you can read my grand jury testimony if you want to but I have testified in the grand jury that Mr. Fairchild asked Judge Nixon to talk to Bud Holmes about Drew's case and that Mr. Fairchild told me that Judge Nixon did and reported that back to him and that their conversation was positive. Now --

Q. That's what I wanted to stop you. Did anyone ever use the word positive?

A. No, I'm not saying someone said positive.

Q. You did in the grand jury?

A. Okay. But --

Q. I need to talk to you about it. I need to know what was said. That's a lawyer using a phrase that nobody in this conversation used.

A. Well, fine but it's the sense of what did occur. Maybe --

Q. I wonder what was said?

MR. WEINGARTEN: Your Honor --

MR. FAWER: Excuse me. I beg your pardon.

MR. WEINGARTEN: I said Mr. Fawer must have missed much of the evidence in this case.

MR. FAWER: I don't think anyone in this courtroom will see.

MR. WEINGARTEN: We'll see. May I proceed?

THE COURT: Proceed.

MR. WEINGARTEN:

Q. What did Judge Nixon tell you first off about his contact with Wiley Fairchild and Bud Holmes in the Drew Fairchild case?

A. I believe that there's only been one statement that Judge Nixon has made to me with respect to the Drew Fairchild case and as I told you this morning, he made the statement to me that Mr. Fairchild had asked him to talk to Mr. Holmes about Drew's case.

Q. Stop there for one second if you may.

A. Okay.

Q. In connection with that statement, did Judge Nixon indicate to you that Wiley Fairchild had expressed some concerns about the handling of Drew's case?

MR. FAWER: Object, Your Honor. He's asked the man -- what he wants to do, he will not let him finish, stop in the middle of his statement and he wants to parse the answer and put in it a different phrase that's totally unfair. He asks him, then stops and says and adds a factor that is not in the statement and I think it's only fair that the man be permitted to say as he did this morning frankly exactly what the judge said and that constitutes the statement. No matter what he would like to add by virtue of the question it doesn't change the witness's testimony as to what Judge Nixon said and it seems to me it's unfair and repetitious of what was said this morning and the witness has just testified now that. It's the second time he's being asked the same question.

THE COURT: Proceed.

MR. WEINGARTEN:

Q. Please continue.

A. Okay. There was a sense that Mr. Fairchild's concerns about Drew's case and that that was why he was asking Judge Nixon to talk to Mr. Holmes about the case and Judge Nixon simply was saying that I did talk to Mr. Holmes about the case and have -- and was saying that to me that he did.

Q. Did Judge Nixon indicate to you that Wiley Fairchild had expressed those concerns before?

A. I got the sense or the belief that there had been an expression of his concern before, but I don't have any personal knowledge of that. I don't know a way to nail that down. But yes, I think that his concerns had been there for sometime.

Q. All right. And what exactly did Judge Nixon tell you he did about Wiley Fairchild's request?

A. Said he talked to Mr. Holmes about it.

Q. And did he indicate to you what Mr. Holmes's response was?

A. That Drew Fairchild's case was okay, that there was not anything going to happen in Drew Fairchild's case.

Q. And did Judge Nixon indicate to you whether or not he conveyed that information back to Mr. Fairchild?

A. He did.

Q. And what did he say?

A. Said he told Mr. Fairchild that I believe he called him Wiley. Told Wiley that.

Q. Now when is your best recollection as to when Holmes asked you whether or not Wiley Fairchild had taped the call?

A. I think that that happened sometime after my grand jury testimony in July of 1984.

Q. And how do you think that?

A. Beg your pardon?

Q. How do you date that?

A. How do I date that? Well, I date that because -- I'm confused about your telephone calls. You have now switched to the telephone call that Judge Nixon made to me at my home; is that correct?

Q. No. Excuse me.

A. Let's come back and clarify what telephone call you're talking about.

Q. I apologize. Your first notice that an investigation was

Q. April, Judge Nixon calls you, right?
A. Yes, sir, he does.
Q. You go to an interview in Jackson I guess in April, May 10th right?
A. That's correct.
Q. Between Judge Nixon's calling you which was when he was incensed and hot about the accusation between those two dates you may have spoken to Bud Holmes but not with respect to the quote the telephone call, correct?
A. That's correct.
Q. From May 10th you go to the grand jury in July so does Judge Nixon, so does Bud Holmes, right?
A. That's correct.
Q. It's after that and that's what you allude to is the grand jury investigation that Bud Holmes and only Bud Holmes begans talking to you asking you whether or not you had been questioned about the telephone call from the farm, right?
A. That's correct.
Q. Just trying to get it straight.
A. That's correct.
Q. That's what we were just working on. That's the sequence dealing with it chronologically right?
A. That's correct.
Q. And it is Bud Holmes and only Bud Holmes frankly of all of the people we're talking about whoever during the course of

# EXCERPTED WITNESS TESTIMONY

## WILEY FAIRCHILD

employees.

Q. All right. What is your involvement, or what has your involvement through the years been in the construction company?

A. Well, I was general manager up to, oh, some fifteen years ago.

Q. And then what happened?

A. Well, I got involved in oil exploration and my brother Rodney, R. D. Fairchild, Rodney Construction Company.

Q. What do you do during the day? How do you keep busy?

A. Well, I come in, open the mail and make any necessary phone calls. I usually go around to some wells that we're drilling in Jeff Davis, Marion, Covington County, Jones County.

Q. So you buy and sell oil interests or mineral interests?

A. We buy. We -- I don't do much selling.

Q. Okay. What do you do with the interest once you have purchased it?

A. Well, I buy it to keep.

Q. To see if the revenues start coming in, if the well develops?

A. Well, we buy leases and buy leases and then, in places where we think they're good hopefully that somebody will drill a well.

Q. What is the extent of your inventory? Can you tell us how many interests you have, or what's the dollar figure? Just give us any indication of what your inventory might be?

Q. Is that in connection with the university here in Hattiesburg?

A. Yes.

Q. All right. Did you ever contribute to any of Bud Holmes' political campaigns?

A. Yeah, but just, it was, I don't remember how much, but yes.

Q. Did he ever solicit money from you for any other campaign other than his own?

A. Yes.

Q. What?

A. Well, I can't remember all of them. Maurice Dantin when he ran for governor was one, and --

Q. Are you frequently solicited?

A. Yes.

Q. And how do you respond usually?

A. By contributing.

Q. Why do you do that?

A. Because I want good government.

Q. Is there any other reason?

A. Yeah, if you got a friend that's -- if I got a friend that needs some help sometime it's good to have somebody you can help.

Q. Does it help if that someone is in public office?

A. Yes.

Q. Do you frequently contribute to both sides of the campaign,

A. Well, as it went on and on, there's talk in the street, the reason Drew Fairchild hasn't, his case hasn't been disposed of, it was intimated that I had paid somebody off.

Q. You received that information?

A. Yeah, I received that information.

Q. How did that make you feel?

A. I was bitter.

Q. Did anyone contact you about money?

A. Yes.

Q. And who was that?

A. Bob Royals.

Q. And is that the former airport manager with Drew?

A. Yes.

Q. To your knowledge was Royals involved with the drug smuggling at Hattiesburg airport, along with Drew?

A. My son said he was and of course I believe he was, and I understand he was out there the night that the plane come in some way.

Q. Was he prosecuted by anybody at that point?

A. No.

Q. What conversations did you have with Bob Royals?

A. Well, he would hint for money and, hint for money, and then the last time he didn't hint, he just hit me right in the face with it, you know.

Q. How do you mean?

A. He said me and Bill Porter went over to see Joe Crone yesterday and on the way back, Bill Porter says, if Drew will get up off his money, he'd come clear of this thing. Royals says, well, Drew don't have no money. And he said, well, his old man's got it. And he said yeah, but that's his, it's not Drew's. He says, well, if his old man had knew his son got his tail in the crack, he'd get up off his money. And I said, Boo, I got your message, loud and clear, but the answer is not no, it's hell no.

Q. What was his message as far as you read it?

A. That somebody's trying to blackmail me.

Q. What was your state of mind at that moment? What were you thinking about Drew's case?

A. Well, it just been dragged on and dragged on 'til, and I was just thoroughly disgusted.

Q. And what did you do?

A. Well, I told John Baltar to go to George Phillips and them, in my opinion, I was trying to be blackmailed and I just --

Q. Is that what you did immediately?

A. The best I remember it was. But -- best I remember it. It might have been a little while later, but.

Q. All right. Mr. Fairchild, when did you have this conversation with Royals?

A. Well, these dates I just can't remember, now I can remember him coming out there sitting, me saying just what I did, but I don't keep no diary at the office and I just don't try to remember them dates.

Q. Do you know the gentleman seated at counsel table behind Mr. Pawer, Judge Nixon?

A. Yeah.

Q. How do you know him?

A. He's the federal judge.

Q. And how do you know him? Do you have a personal relationship with him?

A. Yes.

Q. Did you ever seek his help after Bob Royals came to visit you?

A. Yes.

Q. And when and under what circumstances?

A. Something come up about Drew's case and that, that I was real mad and I either got ahold of the Judge or asked Carroll to and, but he come out to my office, Carroll brought him out there.

Q. Is that the first time you had ever seen the judge at your office?

A. No.

Q. Did you have a prior relationship with the judge?

A. Yes.

Q. Why did you want to see the judge?

A. Drew said that when we paid the full 10,000, everything would be over, and that was supposed to come with Bud Holmes. And I just wanted Bud Holmes to do what he promised to do.

Q. So what was Judge Nixon to do?

A. Well, he had, I told him what had happened and I said, now, if they will go ahead and prosecute Bob Royals, they won't hear a damn word out of me. He's guilty and my son's guilty, but I just don't like them picking on my son because I got money. And so that's what I told the judge.

Q. Why did you tell Judge Nixon that?

A. Well, I knew him and Bud Holmes was friends and he previously said, he come out there one time, thanked me for putting him in a good oil deal and he said if I can ever help you, I will; and if I can't, I'll tell you.

(Discussion at side bar, not reported.)

BY MR. WEINGARTEN:

Q. Mr. Fairchild, when I last was posing questions to you, you were describing a visit Judge Nixon made to your office, is that correct?

A. Yes.

Q. Just to make sure that we understand, what prompted that visit?

A. There was something in the paper, something come up with Drew's trial, and I don't remember what it was, but maybe that he wanted Drew to, to come down there. I don't remember what it was, but.

A. It was a good reason, but it just don't come to my mind now.

Q. Okay, what did you do? Why did you seek out Judge Nixon?

A. Well, he's good friends with Bud Holmes.

Q. How did you know that?

A. Well, street talk, street talk, and Bud had told me, Bud had told me how close he was to him.

Q. Did you want something from Judge Nixon at the time?

A. I wanted him to get Bud Holmes to do what he had promised to do, yeah.

Q. So did Judge Nixon come to your office?

A. Yes.

Q. Did you have a conversation?

A. Yes.

Q. What was the nature of the conversation?

A. I told him what it was that they was trying to blackmail me and I wasn't going to be blackmailed, and that, what Bud had promised to do, and I said now if they will go ahead and prosecute Bob Royals, won't hear a word, because he's guilty just like my son.

Q. Was it the visit by Royals that triggered the visit --

A. I think that was, yeah. I think that was the visit by Royals.

Q. Was it the Royals matter that particularly angered you?

A. Well, it did, yeah, sure it did.

Q. Why did you use the word blackmailing. Who had been blackmailing you?

A. I couldn't figure out nothing else, thing had drug on and on and on, you just tell, work with people for fifty years like I have, you just learn something about human beings.

Q. How did Judge Nixon respond to you?

A. In my office I don't recall him saying anything.

Q. Did he just sit there and listen to you?

A. Well, he kind of, yeah, kind of shook his head, maybe grunted a little or something or another.

Q. You remember no conversation?

A. Well, I was doing all the talking. He might have said something, but, and probably did, but I don't remember.

Q. Approximately how long did the meeting take?

A. Oh, I'd say fifteen or twenty minutes.

Q. Okay. Did you have subsequent contact with Judge Nixon about your meeting?

A. He called me that night just about seven o'clock.

Q. What did he say?

A. He said Wiley, you know that man we was talking to this evening? I said yeah. He said well, I'm in his home, and everything going to be taken care of to your satisfaction. I says thank you, I appreciate that.

Q. Did you recognize the voice at the other end?

A. Yeah.

Q. Did he identify himself?

A. No.

Q. How did you recognize his voice?

A. I just can recognize voices.

Q. What followed that conversation with Judge Nixon?

A. Bud got on the phone, Bud Holmes.

Q. And did you recognize his voice?

A. Oh, yeah. Yeah.

Q. What did he say to you?

A. He said Wiley, when this man asks me to do something, I don't ask no questions, I just go ahead and do it.

Q. What did you say?

A. I said thank you, Bud, I appreciate that.

Q. Was there any further conversation?

A. No.

Q. What's the next thing that you recall happening in your son's case?

A. Well, it was later passed to the file.

Q. Okay. Do you recall when this conversation was, do you have a precise date?

A. No.

Q. Did you mark it down in a calendar?

A. No, I don't keep no diary.

Q. Did it occur before or after the case was passed to files?

A. It occurred before the case was passed to the files.

Q. Are you certain of that?

A. Yes, that's what I was mad about, because it wasn't passed to the files like Bud had promised to do it.

Q. Okay. You remember the conversation well, at least you're testifying with some specificity to the words of Judge Nixon and to the words of Bud Holmes, is that true?

A. Yes.

MR. FAWER: I would appreciate it if questions were posed as opposed to argument. I would expect more of even this prosecutor.

MR. WEINGARTEN: Your Honor, I am going to object to the constant editorializing of counsel. It started yesterday, it has not stopped. That is not proper conduct from an attorney and he knows it.

MR. WEINGARTEN: That is the --

MR. FAWER: Excuse me, may I make my objection? He has just asked the man did he receive a call. He testified to what the Judge ostensibly said, what Bud Holmes said, now he's asking do you remember it. I suggest it's an improper question.

THE COURT: Overruled. Proceed.

BY MR. WEINGARTEN:

Q. Do you recall the call, sir?

A. Yes.

Q. Do you recall it well?

A. Yes.

Q. Why?

A. Well, it was, it made me happy. I thought my son's case was going to be done away with once and for all.

Q. How did you find out that the case was passed to files?

A. Carroll Ingram, best I remember, brought me a copy of it where it had been passed to the files, and brought it out to the office, I believe he said something about I got you a Christmas present, something, I was real happy. Called Drew's wife, she was happy too, come out there, got a copy of it.

Q. Do you recall talking to Ingram about the telephone call from the farm?

A. Yes.

MR. WEINGARTEN: Judge, I suggest that would be a

THE COURT: Proceed, Mr. Weingarten.

MR. WEINGARTEN: Thank you, Your Honor.

BY MR. WEINGARTEN:

Q. Good morning, Mr. Fairchild.

A. Good morning.

Q. Mr. Fairchild, I would like to pick up where we left off last night. I believe you had testified that you had put Judge Nixon into a deal. Please begin there, sir, and explain to the ladies and gentlemen of the jury, what you were talking about. what kind of deal.

A. It was some royalties in three oil wells.

Q. And what was your first contact with this deal?

A. Carroll Ingram come to my office, asked me to put the Judge in a good oil deal.

Q. Did you know the Judge personally at that time?

A. To the best of my memory, I hadn't met him.

Q. All right. Had you ever heard of him?

A. Oh, yeah, yes.

Q. Did Carroll Ingram indicate why you should put him into a good good oil deal?

A. Yes, said he had a bunch of kids, bunch of children who was in school, some of them was getting ready to go to college.

Q. And what?

A. And he was having, he was a -- He was needing to be in a good deal.

Q. Do you remember when this was?

A. No.

Q. You don't have any idea?

A. I believe it was about 1980.

Q. Do you remember when in 1980?

A. No.

Q. Can you associate it to any event?

A. Oh, my son, Drew's case was pending in the federal court.

Q. When the first approach came?

A. Yes.

Q. Now, do you have records that reflect that?

A. I didn't make no record of when Carroll come out there and asked me to.

Q. So this is just a recollection of yours?

A. Yes.

Q. Are you certain about it?

A. Yes.

Q. You are?

A. Yes.

Q. Okay. What was your reaction to Carroll's request?

A. Well, I decided when he asked me to, to put him in a deal.

Q. Why?

A. Because he was a influential man.

Q. Why was that a consideration for you?

A. I believed if there was ever a time he could help me he would.

Q. Did you act immediately when Mr. Ingram made the request? Did you immediately put Judge Nixon into a deal?

A. No.

Q. Why not?

A. I didn't, couldn't decide what oil wells to put him in at that time.

Q. Did you have an idea about certain wells at that time?

A. Well, then or shortly after then, yes.

Q. What were your ideas? What were you thinking?

A. Well, I wanted to put him in some deals that were good.

Q. Did you fix on any particular wells?

A. I picked out three wells.

Q. All right. What wells were they?

A. It's a Wilkie well in Mobile County and L. D. Ross in Covington County and Rogers in Marion County.

Q. All right. Start with the Wilkie well and tell the ladies and gentlemen of the jury, why you selected that particular well?

A. I selected them, that because I thought it was a good well.

Q. And why?

A. Well, you just -- you just -- you get the information and on a well and the logs and the core and you have an idea that a, that it's going to be a good well.

Q. Were these wells producing at the time or were these simply interests that you had in anticipation of production?

A. It was, we had an interest in the three wells and I think I told Carroll the three wells, but the three wells that I was going to put him in, and, and then, and that's the three wells that we wound up putting him in.

Q. Who selected the wells?

A. I did.

Q. Did you negotiate with anybody about the wells?

A. No.

Q. Did you discuss other wells with anybody?

A. Not at that time.

Q. All right. Did you discuss whether or not you would put Judge Nixon into a deal with these three wells with Judge Nixon?

A. No.

Q. Did you have any discussions with Judge Nixon at all at this time?

A. I don't remember having any discussion with him.

Q. All right. Did a period of time pass between when you told Carroll Ingram that you were thinking about these three wells and when documents were actually prepared?

A. Repeat the question.

Q. All right. Take from the time you told Carroll Ingram that you were thinking about the three wells, --

A. Yes.

Q. You find a grantee named in any of the 1981 deeds?

A. No.

Q. Were those deeds prepared pursuant to your instructions?

A. To my instructions or Carroll Ingram's one.

Q. Why to your knowledge was no grantee put in the 81 deed?

A. Carroll, best of my remembering, he said he didn't know what name they wanted to be put in.

Q. Okay. What happened to the 1981 deeds? Were they given to Judge Nixon?

A. They were sent, to the best of my memory, they were sent to Carroll Ingram.

Q. And what happened to them?

A. He sent them back and said they need to be backdated.

Q. Did did he say why?

A. He said federal judge had to make disclosures, and it would look better if it was backdated, that's the best of my recollection what he said.

Q. And what did you do when he said that?

A. I would have given them to Skip Jarvis.

Q. And did you give him any instructions?

A. Well, Carroll had already told him, see.

Q. To backdate them?

A. To backdate them. He didn't need no instructions from me, I knew he was going to do it.

Q. Were the deeds in fact backdated?

leading question.

MR. WEINGARTEN: Your Honor, may I pursue my questioning as I'm doing?

MR. FAWER: I would object to the form of the question.

THE COURT: Overruled.

BY MR. WEINGARTEN:

Q. Is it not fair to say, Mr. Fairchild, that Judge Nixon was to get paid from the first runs with the 80 documents and the 81 documents?

A. Yes.

Q. So why was there backdating?

A. Because Carroll Ingram asked us to backdate them.

Q. From your understanding of the oil business, did the backdating have any practical effect at all on the deal that you were contemplating with Judge Nixon?

A. Repeat the question now?

Q. From your understanding of the business, what changed between you and Judge Nixon when you backdated those deeds?

A. Well, it would have been the same effect if he'd have got the -- got that from the first day of runs, he would have got paid from the first day of runs on either instrument.

Q. From your understanding, when was that deal legally effective?

MR. FAWER: I think that was asked and answered, I would object. Your Honor had ruled on the question, he was allowed to ask it an it was answered.

MR. WEINGARTEN: I think he can clarify that.

MR. PAWER: Excuse me. He --

THE COURT: I'm sustain it. He already said when he received the deeds they were effective.

MR. WEINGARTEN: Thank you, Your Honor.

BY MR. WEINGARTEN:

Q. Mr. Fairchild, in your view, in your opinion, what was the value of the three mineral royalty interests that are represented in Government's Exhibit 8, 9, and 10?

MR. PAWER: Could we have an idea of some date, day?

BY MR. WEINGARTEN:

Q. As of February 25, 1981?

A. Oh, approximately twenty-six, twenty-eight thousand dollars.

Q. How do you come up with that figure?

A. Well, it's just a judgment.

Q. And a judgment based on what?

A. On all the information I had about the well.

Q. Were the wells worth more or less than that in your judgment on February 25, 1980?

A. They were worth less.

Q. Why would that be?

A. Well, the best of my memory they had been in production and it's, you know, they had been producing.

Q. Would you have had more or less information about these wells in 1981 than in 1980?

A. We had more in 1981.

Q. Do you recall what you bought those mineral interests for originally?

A. Two hundred dollars a lease acre.

Q. Do you recall when you would have purchased them?

A. No, but some two or three years earlier.

Q. And would the value of the royalty interests have changed over that two or three year period?

A. Yes.

Q. Why?

A. Well, a lease acre is equivalent to seven royalty acres, and I bought the seven royalty acres for two hundred dollars an acre, best I remember. And that was all it was worth back at that time.

Q. Why would it be worth more later?

A. Well, because wells was drilled around there, and the closer the lease gets to production the more it's worth.

Q. Were you out to make money yourself on this deal with Judge Nixon?

A. As a general rule, I don't deal in buying and selling for profits. I buy something to keep it.

Q. And what about when you sell something?

A. Huh?

Q. What about when you sell something?

A. Well, when I sell something, I want to get something, of course, for it, and something, something where it won't look like a hundred per cent gift.

Q. Was that the situation in this case, Mr. Fairchild?

A. I'd say yes.

Q. What was done with the 1980 deed?

A. I don't know.

Q. Were they recorded?

A. I don't remember.

Q. Did you have anything to do with the recordation of the deeds?

A. No.

Q. Pursuant to your agreement, or pursuant to the deal with Judge Nixon, who was to pay Judge Nixon when the royalties matured, when they were ready for payment?

A. Well, the construction company was responsible on the Wilkie well and Fairchild Windham on the other two wells.

Q. Why was that?

A. Well, because we had the working interest in the wells, and we have to pay our own royalty owners.

Q. Did you make any effort to get the oil companies themselves to pay Judge Nixon?

A. Yes.

A. They have unitized that field and when you unitize a field, you, they, you just get an interest in all of the well, and Texas Getty was operating this well, and I think they had one percent of the well or two percent or something and they just purposely cut the well down to where we getting about, well, where we getting 35 thousand a month at one time, now we getting about 13, 14 thousand.

Q. Are you challenging that in any way?

A. It's in court.

Q. And if you're successful, what will happen?

A. We will get what this one well's producing.

Q. If you're successful, would Judge Hixon benefit from that victory?

A. Yes.

Q. Do you have any idea of the life expectancy of either -- Do you know or do you have an opinion about the life expectancy of the Wilkie well or the Rogers well?

A. I've been fooled so many times on the life of them, the Wilkie well was supposed to last a long, long time.

Q. In the oil business, what does that mean?

A. Well, 20 years.

Q. Okay. About how the other well, the Rogers well? What's your expectation?

A. Oh, 12 or 15.

Q. All right. Is it fair to say the oil business is risky?

A. Yes, very risky.

Q. And people often select wells that don't produce. Is that correct?

A. Yes.

Q. Why did you select three wells in this instance?

A. Well, because the oil well was risky and I wanted it to be a good deal and put him in three and the odd are way against three wells going bad.

Q. Of the three wells you selected, were all three wells good?

A. The L. D. Ross is not such a good well.

Q. Is that well, are the interests in that well represented by Government's Exhibit 19?

A. Yes.

Q. Go through those checks the way you went through the other checks.

A. February 18, 82, 4 hundred 64 dollars and 25 cents, April 6, 82, one dollar and 12 cents, June 7, 82, 14 -- a hundred and 43 dollars and 51 cents. September 15, eleven dollars and 92 cents. January 4, 82, five dollars 50 cents, February 14, 83, 3 hundred 72 dollars and 65 cents, May 9, 83, 3 dollars and 63 cents. July 13, 83, 4 dollars and 27 cents, February 13, a hundred and 56.27, February 10, 84, 89 dollars and 81 cents, April 18, 84, five dollars and 48 cents, and July of 84, 4 hundred 28 dollars and 56 cents, October 4, 84, nine dollars and 92 cents, December 31, 84 -- 2 dollars 29 cents, February

12, one hundred 77.13, April 153 dollars and 75 cents and May 85, 246.51, May 23, 85, 122.36, and August 6, 85, five dollars and 55 cents.

Q. What happened with that well? Do you know?

A. I think it was mechanical trouble that never did get it opened it down there in the producing zone.

Q. Is there any expectation for improvement, as far as you know?

A. No.

Q. What arrangements were made that you know about for Judge Nixon to pay for those interests?

A. Carroll Ingram handled that. I don't remember anything about that.

Q. Did you fix a price?

A. Huh?

Q. Did you fix a price?

A. I could have, could have, but I don't remember, but in all probability somebody would say here's what we have got down there, but Carroll Ingram was handling it and I was depending on him to, you know.

Q. Were you involved in any negotiations with Judge Nixon about the price?

A. No.

Q. Were you involved in any discussions with Judge Nixon about the price?

A. No.

Q. Were you involved in any negotiations with Judge Nixon about interest rates?

A. No.

Q. About collateral?

A. No.

MR. WEINGARTEN: Government's Exhibit 15 16 and 17.

BY MR. WEINGARTEN:

Q. I hand you Government's Exhibits 15, 16 and 17, sir, and ask you if you have ever seen them?

A. I probably saw them but I don't recall seeing them, no.

Q. Do you normally take notes back for consideration of mineral royalty interests that you sell?

A. What?

Q. Do you normally take paperback or do you take notes back for the consideration of mineral royalty interests that you sell?

A. Well, like I say, I don't deal in this and I don't deal in this, and just in some cases and Skip Jarvis and Carroll Ingram handled this.

Q. Well, do you recall in all your years in the oil and gas business, ever taking a note back for consideration in a sale of a mineral royalty interest?

A. No, I hadn't. I don't recall one. I could have, but I just don't remember it if I have.

Q. Do you recall the first time you met Judge Nixon?
A. The first time that I remember it, he come by the office.
Q. And what happened?
A. He thanked me for putting him in the oil deal.
Q. Was he alone or was he with someone else?
A. Carroll Ingram brought him out there.
Q. Where in your office did you meet?
A. In my office.
Q. Was there ever a time you were alone with the judge?

MR. FAWER: Excuse me, could we have some dating of this incident?

BY MR. WEINGARTEN:

Q. Do you have a date, Mr. Fairchild, can you tell us --
A. No.
Q. When would this have taken place in connection with the deal that we have talked about?
A. It would have been, it would have been Judge Nixon started receiving some checks.
Q. How do you know that?
A. Well, he thanked me for putting him in the deal.
Q. Well, how do you know about checks?
A. Well, I assume that he got the checks in and knew he had been put in a good deal.
Q. All right. What do you recall about the meeting?
A. Well, he thanked me for putting him in there and we just

had a friendly conversation and he says if I can ever help you, I will and if I can't, I'll just tell you I can't.

Q. Was Carroll Ingram present during that conversation?

A. No.

Q. Where was he?

A. Well, he went back in the coffee -- No, I don't -- I don't know. I think he went back in the coffee room and one of my secretaries carried him back to the office.

Q. Did Judge Nixon mention to you that he had received checks?

A. No.

Q. Why do you date the meeting to the receipt of the checks?

A. Well, because he thanked me for putting him in a deal.

Q. When was the deal effective?

A. From the first day of the production on the wells.

Q. When did Judge Nixon, to your knowledge, receive the finished documents?

A. Well, I give them to Carroll Ingram. I don't have any idea, so he sent signed them and put them on record and I don't know what he done with them after that.

Q. Okay. When was the next time you saw Judge Nixon?

A. Oh, well, it was some time after that that something happened in my sons case that upset me and I asked Carroll to get ahold of him, that I wanted to talk to him. And he come out there --

Q. Is that --

A. -- or Carroll brought him out there, one.

Q. Is that the meeting that you discussed yesterday?

A. Yes.

Q. Okay. Did you ever talk to Judge Nixon about other deals that you might put him in?

A. Oh, I mentioned one other deal that I was considering putting him in.

Q. What deal was that?

A. Board of Education well in Simpson County.

Q. And did you in fact put Judge Nixon in another deal?

A. No.

Q. Why not?

A. Well, that well turned out to be no good.

Q. Did Judge Nixon indicate interest in more deals with you?

A. Well, we discussed it at a cocktail party one night and it was brought up and I was the one that told him I would, I would think about putting him in another deal.

Q. What was Judge Nixon's response?

A. Oh, he was friendly. I mean, we had a good conversation.

Q. Okay.

A. And I was feeling no pain, I don't remember what went oh, everything, you know, but I do remember the conversation.

Q. All right. Mr. Fairchild, did there come a time in 1984 when the federal authorities came and talked to you?

A. Yes.

Q. Do you recall when that was?

A. I don't recall no dates, no.

Q. Did the FBI discuss with you the deal that you have discussed today before this grand -- before this jury?

A. Yes.

Q. And how did you respond to the FBI?

MR. FAWER: Excuse me, Your Honor, I would object to this line of inquiry. Is he seeking to impeach his own witness? At this point I submit what he said to the FBI is not probative of the events in this case. What he said on a previous occasion, I mean, I've allowed an awful lot of hearsay to come in without objection in terms of conversations, but here's he's being asked what he said on an occasion out of court with nonparticipants in this case and I would object strenuously, Your Honor.

THE COURT: What's the reason for asking that question?

MR. WEINGARTEN: Perhaps we should approach the bench.

THE COURT: Yes. (AT SIDE BAR:)

MR. WEINGARTEN: We intend to ask questions that are responsive to Mr. Fawer's cross-examination of Skip Jarvis and ask Mr. Fairchild about the meeting Jarvis had with him, so some of the things he said to him that were played on the tape and generally what his responses were to the FBI to explain

Q. Have you served your sentence?

A. Yes.

Q. What did the government recommend to Judge Carr as far as your sentence was concerned?

A. They recommended that I not be incarcerated.

Q. And Judge Carr did what?

A. He sentenced me to two years, suspended twenty-two months.

Q. How much time did you actually do?

A. Well, technically two months, but the way it was, come about I checked in on a Friday morning, got credit for Friday, Saturday, and Sunday, and there was some holidays and stuff in there. I think I spent 39 nights up there.

Q. In Jackson?

A. Yeah.

Q. Mr. Fairchild, when was the first time you told anybody about the phone call from Bud's farm about which you testified yesterday?

A. Repeat the question.

Q. When was the first time you told anybody about that call?

A. It was a day after that my attorneys had argued the motion before Judge Carr to dismiss the indictments, it was the day after that. It was in Wallace Gunn's office here in Hattiesburg.

Q. So it would have been after you were indicted?

A. Yeah. They argued to dismiss the indictments before Judge

Carr. He turned them down.

Q. All right. Up to that point had you told anyone on behalf of the government about that call?

A. No.

Q. After you disclosed the fact of the call to your lawyers, what happened? Don't say what anybody said, but what information -- what happened then?

A. Well, we discussed the terms in general.

Q. All right. Was the information passed to anybody about the call?

A. Well, I passed the information to my lawyers.

Q. And did your lawyers then pass the information to anybody?

A. Well, in the plea bargain, yeah.

Q. I just want to ask one or two questions about the call that I didn't ask yesterday and then I'll be through, Mr. Fairchild. You testified yesterday that you used the word blackmail in your conversation with Judge Nixon, is that correct?

A. Yes.

Q. Did you indicate to Judge Nixon who it was that you thought was blackmailing you?

A. Well, I thought it was Bud Holmes.

Q. Did you tell Judge Nixon that?

A. Yes.

Q. Did you make any request of Judge Nixon?

A. Well, he had said if he could ever help me he would, and I just told him about that I would be, in my opinion I was being blackmailed, and that I was damn tired of it, street talk was that the reason my son was got out because I had been, had paid somebody off, and --

Q. Did you make any request of the judge?

A. We had this conversation. I told them that Bob Royals was just as guilty as my son was, and if they would go on an indict and prosecute him, they wouldn't hear a word out of me. They wouldn't hear a word out of me. At that time then Drew and I wasn't on good terms, but I was just fed up with all this newspaper stuff, street talk, and I assumed that he would go on and talk to the --

Q. Talk to who?

A. To Bud Holmes.

Q. All right. The call you received that night, who got on the phone first?

A. Judge Nixon.

MR. WEINGARTEN: Thank you, Mr. Fairchild.

THE COURT: Let's take a short recess.

MR. FAWER: Before we do that, I think there is a single charge you might want to give the jury at this point (Indicating).

THE COURT: Guilty pleas entered by government witnesses may not under any circumstances be considered by you as proof of the guilt of Walter L. Nixon, Jr. A criminal

A. Yeah, would help Mississippi and of course --

Q. And you -- Go ahead. I'm sorry.

A. Help Mississippi, and of course as long as it wasn't detrimental to my business, I would have tried to get something done about it.

Q. We all try to do that. Right? There's nothing wrong with that?

A. That's right.

Q. You hope what's good for Mississippi was good for Wiley Fairchild and whatever you could to help that along, you would. Correct?

A. Yes.

Q. And you knew a lot of, aside from Carroll Ingram, who was a member of the legislature, you knew of a number of of people who held public office. Right?

A. Yes.

Q. You knew governors of Mississippi?

A. Yes.

Q. Which governors? Who was the first governor you knew on a personal business?

A. Oh, J. P. Coleman.

Q. Later became a judge?

A. Yes.

Q. Judge of the Fifth Circuit. Correct?

A. Yes.

Q. Which is the next highest court in the federal system. Right?

A. Yes.

Q. Who else? What other governors?

A. Well, Governor Dodson, William Winter and Governor Williar Waller.

Q. Okay. And you were on speaking basis with these people?

A. Yes.

Q. Okay. And on occasion, in fact, you even had some business transactions with Governor Waller?

A. Yes.

Q. He was in some -- he made some investments with you. Correct?

A. Yes.

Q. He invested in some oil and gas wells and he was successful on some and some were unsuccessful. Right?

A. Right.

Q. You tried to make the investment hopefully good, but you didn't always second. Correct?

A. Repeat the question?

Q. Surely. That's just what I want you to do, any time you don't understand it, tell me. Over the years, prior to this, prior to the 70's William Waller had made some investments in the same oil wells that you were in. Correct?

A. Well, I put him in some, yeah.

Q. And he paid money for those investments?

A. Yes.

Q. And sometimes he made money and sometimes he didn't make money. Correct?

A. Yes.

Q. Okay. Were there other people who you -- You used the phrase, put him in the investment. These were usually leases, oil leases that you owned or leased and you would sell him a piece, a small portion. Is that right?

A. Yeah, but what we call royalty, override.

Q. You really are someone who's been in this business a long time. Right?

A. Yes, sir.

Q. Tell the jury, when you say a royalty interest and overriding interest, what does that mean? Explain it to them.

A. You got the royalty is one eighth, the land owner, when you lease, you got to give him an eighth and you can give him a sixteenth override or an eighth override and then if, in Governor Waller's case, out of my leases, I carved him out an override.

Q. An override?

A. Yeah.

Q. So they understand, what's the difference between the royalty interest and an overriding royalty interest. Is there any difference?

Q. Okay. And when he suggested, he says to you, as I understand it, that Judge Nixon had mentioned that he would like to make an investment and would he, Carroll, speak to you about it. Right?

A. Repeat the question.

Q. What did Carroll say to you when he first mentioned that Judge Nixon would like to make an investment?

A. He says I would like for you to put Nixon in a good oil deal. He's got a bunch of kids and he's having a time with his - his finances or something. He needed to, he would like to get in a good deal.

Q. Okay. Now you knew that judges, I mean he didn't have to tell you this. He knew that judges get a salary. Right?

A. Yes.

Q. I take it, did you know that the salary of a federal employee, you have to live within that budget, right, if you're a federal employee, a federal judge?

A. I didn't know they had to live within that salary, no.

Q. What I'm saying is that's the money that's available for them, that's the pay check they get?

A. Yeah.

Q. And when he told you this, did he mention to you words to the effect that the Judge wanted, because he had these children, who needed to be educated and that cost a lot of money that he wanted to make some investments to supplement his income? Do you recall Carroll talking to you about that?

A. Yes.

Q. That sounded to you like a reasonable thing for Judge Nixon to want to do?

A. Well, I didn't question it. I just -- I didn't question it. I just assumed that he was telling me the truth.

Q. Okay. You had no reason to doubt it. Right?

A. No.

Q. You didn't have any reason to think that Judge Nixon would not have been telling the truth to Carroll Ingram. Right?

A. Repeat --

Q. I'll withdraw that question because that's a little complicated. When he told you that, when Carroll told you that on this first occasion, I take it you simply said, I'll be happy to do that?

A. Or words to that effect.

Q. Okay. If I use some words that are little different than what you recall, please correct me and try to tell me what your words were. If what I say is accurate, we'll go on from there. All right?

A. (Nods yes.)

Q. You indicated you would be happy to do something like that. Am I correct?

A. Yes.

Q. And you don't have any idea, as you sit here, the date of

Q. Okay. You sold it to him at a profit, you paid. I assume you would have paid tax on whatever that profit was, right?

A. Yes.

Q. Okay. And at the time when you set the price and picked the acreage it was far, the value of the was less than the value in February of 1981, correct? You understand my question?

A. It was worth, as the time goes on it's worth so much now, it's worth more later on.

Q. Right. So in 1980 it was worth something less than it was worth in 1981?

A. Yes.

Q. So if you told Carroll in the very end of 79, even the beginning of 1980, which wells and how much acreage it was and you didn't get around to preparing the deeds until February of 81 when you told Carroll what, which acreage it was, and set a price, that price of course would be less than the price you would put on it, or the value you would put on it a year later, correct?

A. In this particular, this particular wells, I don't remember the exact time that I -- I don't remember putting a price on the wells myself. I could have, but I just don't remember that.

Q. In this transaction, there is only two people involved, Judge Nixon, you told us, I heard you say it. you had no discussion with Judge Nixon as to the price, right?

A. No.

Q. The only person you talked to is Carroll Ingram, right?

A. And Skip Jarvis.

Q. Well, Skip Jarvis doesn't advise you on price; you may have told him what the price was going to be, but you set the price, correct?

A. I don't rememoer, and I could have, but I don't have -- I don't remember.

Q. That's fine.

A. And --

Q. Go ahead?

A. I was depending on Carroll Ingram, he's my attorney.

Q. No problem. I understand. You set a price, and I take it you indicated that you thought that the wells were on line in 1981, right? Am I using the right phrase? If they were producing they are called on line?

A. Yeah.

Q. On stream or on line?

A. Both terminologies is correct.

Q. Okay. You indicated you thought that in February of 81 when those deeds were prepared that the wells were producing, correct?

A. Yeah.

Q. Okay. Tell the jury, though, before we come to that, what industry, he didn't make the judgment calls that you made, correct?

A. That's right.

Q. Okay. One other thing. I want to come then to 19 -- around February 81, the deeds haven't been prepared yet. And nothing has happened in terms, you've already made a deal to give certain amount of acreage -- three in Marion, five in Covington, three in Mobile, to assign those to Judge Nixon but to assign them, to sell it to him you have to prepare a document, right?

A. Yes.

Q. Handshake isn't enough, you have to have a document, right?

A. Yes.

Q. Before we go on, I just wanted to ask you something. Are you sure that those wells were producing at the time, even in 81?

A. I couldn't swear that they was, but I think they was.

Q. One way we could tell, couldn't we, is if we took a look at the records of the oil and gas board, because every well must file of record the gas production and oil production with the county or the state, correct?

A. That's right.

Q. All right. Let me show you something if I might. Could I have an Exhibit 10? You've seen these before, haven't you, oil production records?

A. The completion report?

Q. Not the completion report. The completion report is simply a report, is it not, that is filed, required by law, to show the date of completion, the depth of drilling, the thickness of the casing --

A. Yeah, yeah.

Q. But there is a report that is filed by the producing company, Exxon, on the Wilkie 28, okay, Hatters Pond, and it shows you the gas production, right, and oil?

A. Yeah.

Q. Here's the year 1980, and here's where they tested it in June and July, you see that?

A. Yes.

Q. Nothing before that, did some testing, June and July, right, of 30?

A. Yes.

Q. Not a drop in August, September, October, November, December, am I correct?

A. Yes.

Q. Now let's go to 81. January, tell me, how much oil and gas?

A. None.

Q. February?

A. None.

Q. March?

A. None.

Q. April?

A. None.

Q. May?

A. None.

Q. June?

A. None.

Q. July?

A. None.

Q. August?

A. None.

Q. September?

A. None.

Q. October we finally go on stream, am I right?

A. Yeah.

Q. Okay. Now, you had not memorized the facts that you testified to, but I take it, having seen this exhibit, you now see that the well, the Wilkie well in Mobile was not on stream until October of 1981, right? Is that correct?

A. Them reports, if that come from their oil and gas board of Alabama, they are, I'd accept them as being correct.

Q. Fine. I take it then that it was just that you were in error in the sense that you thought it might have been on stream, but it wasn't, because the report makes clear it wasn't on stream for one, two, three, four, five, six, seven, eight months after February 21, correct?

A. Yeah.

Q. Enough can happen after it goes on stream, it's a lot more speculative investment before it's put on stream, correct? Do you understand my question?

A. Repeat it.

Q. A well that has not gone on stream yet is a much, is even riskier than one that is on stream in its early stages, correct?

A. That's correct.

Q. Here we have a well in February of 81, it doesn't go on stream for another eight months, correct?

A. Correct.

Q. All right. So much for Wilkie. You want to go through the rest to take a look at the oil and gas -- you didn't really know whether they were on stream in February of 81 or not, did you?

A. No.

Q. You were using your best estimate, not guessing, but trying to recollect, you seem to have been in error, correct?

A. I will say I was in error.

Q. Okay. You have similar documents, don't you, in Mississippi? There are filings, what do you call the board here in Mississippi? Do you have to file?

A. State oil and gas board.

Q. You file what's called a Mississippi oil and gas monthly production ledger, correct?

A. Yeah.

Q. You've seen plenty of those, right?

A. Yeah.

Q. All right. Let me show you, let's mark it Defendant's Exhibit 21. Let's show it to the government. Now we'll show it to you. This is for the Rogers well -- by the way, this log or this ledger is for many different fields, is it not? You've seen these documents before, correct?

A. Yeah.

Q. Let's look at the one, we're talking about Green's Creek Field, isn't that the one? There is the Rogers well, Marion County, no question we have the right well, right?

A. That's right.

Q. Okay. Now we're going to look at what have we got up through the beginning of 81? In other words, anything producec before the first month of 1981, tell the jury how much oil and gas had come out of that well up until that time?

A. None.

Q. Which means --

A. According to this report.

Q. You don't have any doubt any more about the report?

A. No.

Q. It had not been put on line yet, right?

A. No.

Q. Let's go then, this report is for the year 81. They told you what happened, cumulative figure you've just read from?

A. Yes.

Q. January it wasn't on line, right?

A. January when?

Q. 1981?

A. Yeah.

Q. February it wasn't on line?

A. No.

Q. And March it wasn't on line?

A. No.

Q. So it doesn't go on line, a little bit of production in April we see it on line, that's when it goes on line, right?

A. Yeah.

Q. That's three months after February of 1981, correct?

A. Yes.

Q. Two months. Two and a half months, correct?

A. Right.

Q. So at least as to these two wells you were in error, perfectly -- you know you're human, aren't you? You can make errors in judgment, your recollection, correct?

A. I'm saying them was, that I was in error, yeah.

Q. All right. Fine. The records are in effect the best evidence of when the wells went on line, right?

A. Yes.

Q. Okay. We could show you the Ross well, but what do you call a bad well in the business? One that doesn't produce?

A. Well, the Ross is one of them, it produced, but it just wasn't what it was supposed to be.

Q. Never got your money back on that well?

A. Well, I leased mine out and take an override in it, and I, of course, didn't put up no drilling on it. I own a lot of minerals under it. The folks I leased to hadn't got their money back.

Q. And I take it, you're aware, are you not, that Judge Nixon paid two thousand dollars plus interest for that, for the interest to be assigned on the Ross well, correct? Do you remember how much he paid for each one?

A. No.

Q. Well, we have the notes?

A. Yeah.

Q. Let me refresh your recollection. The Ross well in Covington, two thousand dollars; the Rogers well in Marion, three thousand dollars; and the Wilkie well, four thousand five hundred, okay?

recall in that same conversation telling him that you'd like him to keep in touch, to drop in on you if he was in town or give you a call once in a while?

A. That would have been -- that would be like me to have said that to him.

Q. Okay. Over the next months or next year, 1982, do you recall an occasion he called you just to see how you were, talk to you about the wells, what's going on?

A. Yes.

Q. On the phone, am I right?

A. Yes.

Q. He called you, chat for five minutes, and that would be it, correct?

A. Yes.

Q. Remember him ever stopping by alone, come to your office because he was in town or passing through, have a cup of coffee with you?

A. Yes, he done that.

Q. Okay. You liked the idea he would stop by, correct?

A. Well, yeah, I was glad to see him.

Q. Glad to see him. He found you friendly, you found him friendly, correct?

A. Yes.

Q. Okay. And as I recall, correct me if I'm wrong, in late October did you learn that in that fall, 1982, October of 1982, okay? There is a place here in town called Bonnie and Clyde's, right?

A. Yes.

Q. And the judge had just been made the chief judge of the Southern District of Mississippi, do you remember that?

A. Yes.

Q. And there was a party thrown in his honor, right, a cocktail party?

A. Yes.

Q. And you were invited to attend?

A. Yes.

Q. Your brother was there?

A. Yes.

Q. Carroll Ingram was there?

A. Yes.

Q. George Phillips was there?

A. Yes.

Q. A lot of lawyers were there, other people from the town were there, correct?

A. Yes.

Q. Just a nice time, everybody was very happy about the judge being made chief judge?

A. Yes.

Q. Of course the judge was there?

A. Correct.

Q. You had never met his wife before that night, right?

A. No.

Q. You did meet her that night?

A. Yes.

Q. She is here, seated right here, correct? You see Barbara?

A. Yes.

Q. Do you remember meeting her that night?

A. Yes.

Q. Okay. The judge introduced you to her?

A. Yes.

Q. Okay. And do you remember in the course of your conversation that night that you mentioned to him that you might have another investment that he might be interested in, do you recall telling him that that night?

A. I don't remember telling, I remember telling him or her one, yeah.

Q. Her or him that night, maybe both of them?

A. Yeah.

Q. By the way, there were -- you didn't take them off into a corner or anything, this was done with other people standing around, everybody having a drink in their hand, right?

A. Right.

Q. Okay. I want to stop for a minute, okay? You stayed for a while at that party, assume you left with your brother and that was it, right? You stayed for a period of time and left?

Q. You paid that in July, early July 1981. Okay?

A. Yeah.

Q. All right. Is it fair to say that you actually, -- Well, let me phrase it this way: Are you sure that he had sent you a bill for that amount because the suit was for $10,000, wasn't it?

A. Yes.

Q. So you sent him a check for 26 hundred. Right?

A. Yeah.

Q. And he wanted the rest of it, didn't he?

A. I think that was later on, when he was indicted in state court.

Q. Okay. But you remember there was some conversation where you were being pressed for some more money from Bill Porter. Correct?

A. Yeah.

Q. And Royals talked to you about that?

A. Yes.

Q. After coming back from Maxwell?

A. Yes.

Q. Am I right?

A. (No response.)

Q. Think about it.

A. Drew said he needed to get up 75 hundred dollars and I said, well, they had this F&R oil company and I said you get it all up and get a good price on it and I'll buy it. And that's where he got part, -- and that money went to pay Bill Porter

Q. Let me just understand something. Wasn't there at any time any suggestion made to you that if you didn't pay Bill Porter the balance of the fee, that Drew might get indicted in state court?

A. No, I don't remember nothing about that.

Q. Okay. Did Drew ever mention that to you?

A. No.

Q. Okay. What you --

A. I don't remember him mentioning that to me.

Q. Okay. Fine. You recall, though, that you ended up paying 75 hundred dollars to Bill Porter. Right?

A. Yes.

Q. And what is it, yesterday when you were testifying, you indicated that something about making Drew mortgage his house or something?

A. No, I told him to sell everything that he could sell, except his house.

Q. Except his house?

A. Except it.

Q. Well, as a practical matter, what you asked him to do in order to pay his bill, this 75 hundred to Porter for representing him on the state case, he had just been indicted by the state. Right?

because, to you, because it stuck out, it angered you. Right?

A. Yeah, because I was angry with him because I think he was trying to blackmail me.

Q. Okay. Tell us again what you said. I know what your answer was, it wasn't no, it was hell, no. What did he say?

A. He said -- He and Bill Porter went over to see Joe Krohn and on the way back, Bill Porter says that if Drew would get up off his money he'd come clean with this. And Bob Royals says, well, Drew don't have no money. He says, well, his old man does. He says, yeah, but that's not his money, it's the old man's. And he said, well, if his old man knew he was going to get his tail in the crack -- that wasn't the exact words but --

Q. Excuse me. Going to get his tail in a crack?

A. If the old man knew he was going to get his tail in the crack, he would get up off his money.

Q. Okay. Now in August of 1981, Drew was indicted in the state court. Correct? August 26.

A. Well, yeah, if that's the way it was.

Q. No question that's the date.

A. Okay.

Q. After that he had already gotten his tail in the crack. Right? Got indicted. Correct?

A. (No response.)

Q. Do you understand my question?

A. Yeah, he got indicted in state court.

Q. Listen to what I'm asking you. Bob Royals is telling you at this visit that if you don't get up off your money, your son could get his tail in a crack. Right?

A. Yes.

Q. He had not, he had not been indicted in federal court, as far as you knew that problem was all over with. Right?

A. Yeah.

Q. Okay. Porter, before the indictment in August of 81, was still complaining that he had not been paid the 75 hundred dollars. Right?

A. Not to me.

Q. Well, you knew, but you knew he had sued Drew for ten thousand?

A. Yes.

Q. You tried to get him to take 25 hundred. Right?

A. Yep.

Q. 25 hundred is not ten thousand. Right?

A. That's right.

Q. And he was passing a message along wasn't he, that unless that 75 hundred was paid, your son is going to get his tail in a crack?

A. He didn't mention 75 hundred.

Q. He meaning Royals?

A. Yeah. Royals didn't mention 75.

Q. I understand that. He's telling you, though, if you don't get up off your money, your son will get his tail in a crack. Am I right?

A. Yeah.

Q. Now when the 75 hundred is paid -- your son is indicted on August 26. Correct?

A. Yeah.

Q. You do pay Porter 75 hundred on September 3, 1981. Am I correct?

A. Yeah.

Q. And as far as you knew and Drew knew, this 75 hundred was going to take care of the problem in the state court. Correct?

A. Yes.

Q. Okay. So the conversation with Royals is in all likelihood took place just before the state case and the events that happened shortly after that visit is the indictment of your son and the payment by you of the 75 hundred dollars to Porter. Correct?

A. The best I remember when he was out there he had already been indicted in state court.

Q. Tell me what makes you think that. Let me ask you another way. I know that's what your best recollection is, at least you're saying that --

A. Well, that --

Q. -- the 75 hundred to Porter, as far as you know, was to take care of the state case. Right?

A. Yes.

Q. Okay. In January of 82, let's just jump five months later, he's indicted in August, pleads got guilty in September with Bill Porter who got 75 hundred that day, and by January 12 of 1982, your son with Bill Porter has made a deal with Bud Holmes. Right?

A. Yes.

Q. That he will get no jail time, probation and a $5,000 fine.

A. Yes.

Q. Right?

A. Yes.

Q. As far as you knew there was not going to be any problem then, even on the state level?

A. Right.

Q. What is it that you're thinking in your mind that could have still been a problem on the state level after the deal was already made?

A. There's no question in my mind, when Bob Royals come out there, it was, he was trying to blackmail me.

Q. I hear that. It sounds like it was. But it sounds to me like he was trying to get from you an amount of money for his friend Porter. Porter was his good friend, wasn't he?

A. Yes.

Q. You didn't think, I mean you now know or you knew at the time I guess that Royals may have in fact been involved with time, right?

A. No, that's right.

Q. All right. The first time, the next thing that you recall happening, if I'm not mistaken, with his case, is Carroll brings to you a document passing the case to the file, right? Right around Christmas of 1982?

A. Yeah.

Q. Correct?

A. He brought me the document, yeah.

Q. And you were still on good terms with Carroll or were you having a problem with him then?

A. I was still on good terms.

Q. Okay. And he brings, there was a document that said -- what's the number. This is the document he brought to you, didn't he, said Merry Christmas, brought you a document signed by Jack Weldy just before he left office, right?

A. Yes.

Q. You looked at it and you were pleased, right?

A. Yes.

Q. And you hadn't seen any publicity on this thing in a long, long while, right?

A. Yes.

Q. Am I correct?

A. I don't recall there being any.

Q. Let's think about it a minute. He pled back in January, cut his deal, right? January of 82. This is now December of 82, he was in the hospital recuperating, looking around for the fugitive, there is no publicity for a whole year, things are real quiet, right?

A. Well I don't know whether there was any publicity or not. I don't think it wasn't a year here without some publicity.

Q. Can you tell us of anything that would have generated some publicity, until this happened?

A. Well, I know Marvin Rubin down at Viewpoint on the radio station to the effect that something was, wasn't right because that, I don't remember when that was, and that upset me.

Q. Just saw it. Marvin Rubin got on radio and complained, why was the case being passed to the files, right?

A. Yes.

Q. Let's stay where we are. Carroll has brought you this present, simply passing the case to the files, right?

A. Yeah.

Q. You had no -- had you ever heard of a case being passed to the files? You had never been involved in any criminal proceedings, right?

A. No.

Q. As far as you knew -- by the way, you gave a copy of that to Drew's wife, right?

A. Yes.

Q. You weren't talking to Drew, but you were on speaking terms with his wife, right?

A. Yes.

Q. And you gave her a copy, in effect, being nice in effect, saying look, show this to Drew, correct?

A. Yes.

Q. Okay. And you had no -- who told you that passing a case to the files meant it went away? Anybody?

A. Well, I just taken it for granted it went away.

Q. You wanted to believe that, you were taking it for granted, and that's the way you were operating, perfectly normal, right?

A. Yeah.

Q. Particularly since you're not a lawyer and you don't understand these things, right? But then out of the blue, Christmas passes, New Year's goes, two days later the papers pick up that that case was passed to the files, right?

A. Yes.

Q. And the name, what name is on the front page?

A. Drew Fairchild.

Q. Okay. Could I have, what's the number, publicity, January 7th? Let me show you, did you read the Hattiesburg, when there would be something about this case would you read it in the Hattiesburg American?

A. Yes, if I was in town.

Q. Okay. Let me show you, January 7th, Defendant's Exhibits 6. Out of the blue, Weldy passes to inactive file Fairchild how he got into the investment?

A. Yeah.

Q. You had never once before ever discussed Drew's case with him for one second, correct?

A. No, I never discussed Drew's case.

Q. And out of the blue, you're telling this man something about blackmail by two good friends of his, right?

A. Yes.

Q. And you even, you don't ask him to do a thing, am I correct?

A. That's right.

Q. He doesn't even know at that point precisely what you're talking about. Let me withdraw that, that's asking to you conclude what's in his mind and that is not fair. You're telling him this out of the blue, and you're not giving him all the background that you've been living with for the past two years or year and a half, correct?

A. I was getting to the point, yes.

Q. Okay. And you complain about, you don't complain at all about wanting anything for Drew's case, you want Royals indicted, am I right?

A. I didn't -- I figured that, Drew's was indicted because he was my son, I didn't like it because it picked on my son because I had money. Bud Holmes, Bob Royals is good friend, he's a pilot for him, and that's why I said about if they'd go ahead and indict Royals and prosecute him, wouldn't hear a damn word out of me.

Q. Let me just point something out. There is a lot of thinking that you have done about this matter over the, before this meeting with judge and after it, correct? A lot has gone on in your mind that you haven't necessarily talked to anyone about, correct?

A. That's probably so.

Q. Okay. What we're here needing to talk about or hear from you, not what's going on in your mind at the time, but what you said to the judge. Now you told us, do you understand what I'm saying, the distinction?

A. (Nods yes.).

Q. I don't want you to mix the two together, okay?

A. Okay.

Q. You told him out of the blue that Bud Holmes and you think even Carroll Ingram are blackmailing you, right?

A. Yes.

Q. You don't ask him to do anything about Drew's case, correct?

A. That's correct.

Q. You have never spoken to him before about Drew, correct?

A. That's right.

Q. And you say something about wanting a man named Royals indicted, correct?

A. No, I didn't say I wanted him indicted. I --

Q. Go ahead, I'm sorry?

A. I said if they will go ahead and indict him and prosecute him ---

Q. Wouldn't hear --

A. You wouldn't hear a damn word out of me, they were both guilty.

Q. You're saying Drew's guilty, and if they prosecute Holmes you, excuse me, prosecute Royals, then you wouldn't hear a word out of me?

A. Right.

Q. Okay. That's it? That's what you say?

A. That's what I said.

Q. As far as you knew, he had no awareness of who Royals was, correct? Royals isn't a relative of yours, right?

A. Right.

Q. It's just a name, correct?

A. What's just a name?

Q. Did you know whether this man had any awareness of who Bob Royals was when you spoke to him?

A. I didn't know whether he would recognize the name or not. I knew that Bob Royals was in the plane when he flew him, he mentioned about flying him somewhere.

Q. Who mentioned?

A. Bob Royals.

Q. You mean Royals may have been a pilot in a plane at one time, and that the judge was on the plane?

A. Yeah.

Q. Do you know pilots, the name of all pilots who have flown you?

A. No.

Q. Okay. Royals -- had never been a word in the paper about Royals being associated in the drug bust, correct?

A. Correct.

Q. Okay. So you have this -- how long did this take, a minute or two? The conversation you described?

A. The conversation with --

Q. The judge?

A. Yeah.

Q. Where out of the blue you're saying I'm being blackmailed, there is nothing I'm asking for for Drew, but it's not fair, I wouldn't complain if they indicted Royals, correct?

A. That's what I said.

Q. And you didn't even, you didn't ask him to do anything for you, correct?

A. No.

Q. Am I right?

A. Yeah.

Q. Okay. And what you said is that you don't recall him saying anything, he may have shook his head or grunted --

A. Oh, sometimes she answers it and sometimes I answer it.

Q. In any event you recall speaking to the judge. Right?

A. Yep.

Q. And speaking to Bud Holmes?

A. Yes.

Q. Okay. You have been rather, you have a recollection, as I understand it, you have been rather vague as to when various things occur. Do you have really a specific recollection of talking to the judge that evening before Bud, as opposed to Bud first and the judge second?

A. Oh, I talked to the judge first.

Q. You're sure of that?

A. I'm positive.

Q. Well, you were positive about some other things. I just want to ask you about this. You were positive the wells were on line also on February in 81, didn't you?

A. I thought they were, yeah.

Q. And you were wrong, weren't you?

A. Yeah.

Q. Let's talk about the order of people you talked to that night. The whole thing lasted what, a minute?

A. A couple of minutes.

Q. And you had six drinks in you by then. Right?

A. Yeah.

Q. And you talk to two men, both of approximately the same age and you have a concrete recollection you spoke to one before the other?

A. Yes. Positive.

Q. Why? I'm just curious.

A. Because the conversation was so important to me.

Q. Okay.

A. I thought that was the, for once and for all, that was over with.

Q. Well, you say it was so important to you. It was so important to you because the Judge is supposed to have said what?

A. Says, you know that, you know that man that we talked about this evening. I said, yeah. He said I'm at his hosue.

Q. You understand that to mean Bud Holmes? You knew that he meant Bud Holmes?

A. Yeah.

Q. Go ahead.

A. And he said, I talked to him and everything going to be worked out to your satisfaction.

Q. Okay. You had asked -- I'm a little bit confused because you had complained about Bud and Ingram blackmailing you and you weren't claiming at all about, you didn't want anything done for Drew, but what you wanted was Royals indicted, if anything. Right?

A. Well, I was bringing Royals up because I believed that

A. Yeah.

Q. Well, then we got to come and ask some questions, additional questions about your testimony, because you told the Grand Jury after you pled, you suddenly changed your testimony, did you not, and told the Grand Jury under oath that what happened after you spoke to the judge is that the case was passed to the files, didn't you? You told that to the Grand Jury.

A. Yeah.

Q. You told it to us here today. And you were wrong both times, weren't you?

A. Well, I thought it was passed to the files.

Q. I believe you. But it wasn't what happened. It had already gone to the files and come back off the files, too, hadn't it, sir?

A. Well, I knew it had come back, yeah.

Q. Well, if it had already come back then it couldn't be, then the conversation with Judge Nixon couldn't happen before it went to the files, could it?

A. Well, when I had this conversation with Judge Nixon, it had not gone to the files.

Q. Sir?

A. I'm positive of that.

Q. Sir, you just told us this is what caused you to call Judge Nixon?

A. Well, I said it could have been. I don't remember as I said yesterday what got me upset.

Q. There was no other publicity. Can you tell this court, can you tell this jury of anything that would have happened until that publicity there that would have upset you, to cause you to say what you did to the judge?

A. Well, I know that something caused it.

Q. Well, that's wonderful, Judge -- Excuse me, Mr. Fairchild, but we are in a court and he's on trial for his life and I need you to tell me what it could have been aside from this, could have made you so upset as to talk to the Judge about the blackmail of Holmes and Ingram?

A. Well, it was something concerning it.

Q. You told us, under oath, in the last 15 minutes, about seven different ways in which you said, yes, it happened after these newscasts?

A. Well, I don't know these specific newscasts but something --

Q. The events reported in those newscasts.

A. Well, I know that when I talked to Judge Nixon, that they had not been passed to the files or I would not have mentioned it to him.

THE COURT: Gentlemen, let's take a recess.

MR. FAWER: Could I just ask one question before we do that? Just one question.

THE COURT: All right.

A. Well, it was after I talked to him it was passed to the file.

Q. That's what you told us yesterday, right? Today when I showed you these documents, as I understand it, it was your recollection those, bringing it back from the file is what triggered your meeting with Judge Nixon, okay?

A. Well, I didn't mean that, no.

Q. That's what you said?

A. Well, I was confused, that wasn't what I meant.

Q. Okay. Well, as I understand it, I've read your grand jury fairly carefully, the number of times you've testified, the way you dated this incident is by the Royals visit to you, right?

A. Yeah.

Q. Everything you remember, the way you anchored this in your mind, the date of the visit with the judge, is it came right after the Royals visit to you, right? Do you want to see your grand jury testimony?

A. Yeah.

Q. You do?

A. No.

Q. I can show you at least ten places where you always said it was the Royals visit, is that correct, you were able to date this from the Royals visit, right?

A. Yeah.

Q. We've talked a lot about the Royals visit here today,

A. I don't remember how long.

Q. A week?

A. I don't remember how long.

Q. I understand. Can you give us some approximation? Wasn't six months, was it?

A. No.

Q. A month?

A. Probably.

Q. All right. I want you as you sit there, I realize you can only do your human best, a month -- are you giving me the outside limits?

A. No, I don't remember how long it was.

Q. Let's double it, okay?

A. I don't remember how long it was.

Q. Well, you do think in your mind, you have it set that the thing that happened is the judge, you talked to the judge, the judge talks to Bud Holmes, passed to the files? That's what you told us before I showed you these things, right?

A. Yeah, I talked to the judge about it, and then later it was passed to the files. I don't remember how long.

Q. From what I've heard you say to the grand jury, or read, that that was the next thing that happened in the case. I mean that's why you figured that what had happened as a result of the visit of the judge was passing it to the files, right?

A. That's, me talking to the judge, next thing I remember when

Carroll come out there and give me a copy.

Q. When I asked you to give approximately how much time?

A. I don't remember.

Q. I know you don't. But I need to ask you, I don't want to keep asking you, I need you to try to help me, probably not a week, but a month?

A. I don't remember how long.

Q. But not six months?

A. I don't remember how long.

Q. Anything we can, any question I could ask you to help you on that?

A. No.

Q. You mean it could have been six months?

A. I don't remember.

Q. Crone was no longer in prison in July of 1982. Did you know that?

A. I didn't know when he got out.

Q. Did you talk to the judge close the December?

A. I don't remember when it was.

Q. You don't really have much of a recollection of these events, do you, in terms of when things happened?

A. I remember very distinctive the important things that happened.

Q. You remember the event, but you don't remember the sequence of events?

A. I remember me talking to the judge.

Q. Nobody is denying that. Nobody is suggesting you didn't?

A. And then that night getting a phone call.

Q. Nobody says you're wrong. We all agree with you. But you don't know when that happened?

A. I know it happened before the thing was passed to the file.

Q. Even though this is the only publicity that came at the time, right?

A. There was publicity all the time. Come up and get postponed or something, there was publicity all the time.

Q. I see. Well, then let's move on. Let's go back to one other thing of interest to touch on. In February -- I didn't ask you something. In February of 81 when these deeds were signed -- Remember that?

A. Yeah.

Q. You follow us? -- that at that time your son already had his memo of understanding, that was out of the way, he hadn't yet been indicted in the state court, you were completely unconcerned in February of 81 about Drew's case. Correct?

A. Yes.

Q. Okay. And so that at that time you weren't worried about his case, you had never met Judge Nixon, talked about anything with him at that time, correct?

A. Correct.

Q. And you had no thought in your mind in February of 81 of

Q. You didn't have any intent to violate the law, you hadn't even met Judge Nixon so what was it that was violation of the law? Could you tell us?

A. Selling something undervalued.

Q. Undervalued?

A. Yeah.

Q. That's a crime. Who told you that's a crime?

A. My attorneys.

Q. You might want to think about going to the bar association. In any event, you have told us that and you told Jarvis that the value you placed on it was the proper value at the time the verbal deal was agreed to with Carroll Ingram. Right?

A. I told Jarvis that.

Q. And you told us that earlier today?

A. Yeah.

Q. You told the truth earlier today, didn't you?

A. Well, a, at the time it was first mentioned.

Q. That's right. The value was, in your judgment, 95 hundred, it may have been more in February of 81, but the time that the deal was made, that was a fair market value. Right?

A. Well, when the deeds was consummated it was worth 26 or $28,000.

Q. I understand that. But the deal had been cut, the verbal deal had been made a year before that. Correct?

A. I don't think it was that long before.

assuming that. Right?

A. Yes.

Q. What I'm asking you, let's put it another way. You knew, did you not, and your lawyers told you this or John -- Did you talk to John Baltar when you were doing this?

A. Yeah.

Q. Talked a lot to John?

A. Yes.

Q. Give the government something against the Judge and maybe you can make a deal. Right?

A. Well, I don't remember the very words, but my lawyers --

Q. I don't want to put words in your mouth.

A. I don't remember the words. My lawyer went in there and talked, Mr. Mr. Reid Weingarten --

Q. I understand this is this is very painful, am I right, to discuss all of these events?

A. Yes.

Q. Is it fair to say you were of an understanding that if you could give them information that would help them against Judge Nixon, that you could make a deal with the government? Was that your understanding?

A. Yes.

Q. You then turned around and you, with the help of your other people who were on your payroll and your lawyers, came up with everything that you could think of to tell the government about we would be free, of course, to modify our recommendations. I know you understand as well that the sentencing judge would not be obliged to follow our recommendations. Sincerely, Reid Weingarten.

The attached document is the plea agreement, am I right, Mr. Fairchild?

A. Yes.

Q. Basically, may I, Your Honor, it's Defendant's Exhibit 29. The plea agreement in that case, the defendant Wiley Fairchild would plead guilty to Count I of the indictment, gratuity, that was pleading guilty to selling too cheap, right?

A. Yes.

Q. United States will move to dismiss Count II of the indictment for perjury? You hadn't committed perjury, had you?

A. No.

Q. United States will make known to the sentencing court any and all cooperation which Wiley Fairchild provides. United States Attorney retains the right to allocute at sentencing. Wiley Fairchild will not be prosecuted by the United States for any offenses, the facts of which are known to the United States. Am I right? That's what they told you?

A. Yes.

Q. And then some time went by. Just bear with me, I'll be done in a minute, Your Honor. I'll be done in a minute.

(Pause.)

MR. WEINGARTEN: That's exactly right, as a prior consistent statement. Rule 801.

MR. PAWER: 801, the prior consistent, you should understand it, if there is a motive to fabricate. If you don't establish a prior motive for fabrication, that -- that's 801.

MR. WEINGARTEN: As long as it's in the in evidence.

THE COURT: Why don't you go ahead and question him about it without putting it in evidence.

MR. PAWER: Your Honor, I would want a full hearing before that is permitted.

THE COURT: I understand.

(Open court:)

BY MR. WEINGARTEN:

Q. Mr. Fairchild, you've been asked a great number of questions about the phone call from the farm to your house after the visit by Judge Nixon. Mr. Pawer asked you a great number of questions about the timing of that. I'm not going to ask you a great number of questions; I'm going to simply ask you, do your very best, as you sit here now, and tell the ladies and gentlemen of this jury whether or not the call from the farm was before or after your son's case was passed to the files?

A. It was before.

Q. Are you certain of that?

A. My conversation with him was before the case was passed to the file.

Q. Has the government forced you to say that?

A. No.

Q. Has the government put any pressure on you to --

A. No.

Q. -- to say that?

A. No.

Q. Has the government put the idea of the phone call into your head?

A. No.

Q. Mr. Fairchild, who got on the phone first, was it Bud Holmes, or was it Judge Nixon?

A. Judge Nixon.

Q. Has the government suggested to you that it was Judge Nixon that got on the phone first?

A. No.

Q. Has the government forced you to so testify?

A. No.

Q. Is it the truth, sir?

A. Yes.

Q. Is that why you're testifying to it?

A. Yes.

MR. WEINGARTEN: That's all I have.

MR. FAWER: Your Honor, I would move into evidence at this time Defense Exhibit 20, which is production records on

# EXCERPTED WITNESS TESTIMONY

## BUD HOLMES

Fairchild and seemed like Judge Nixon just kind of in a, just general casual conversation type thing, said he was looking for some investments, you know, this type thing, how we got into it. And it seemed like the name Mr. Fairchild came up and he asked if I'd check with Mr. Fairchild, you know, to see if he has any and that was one time.

And another time I remember Judge Nixon asked me if I knew Wiley Fairchild, if I was familiar with Wiley Fairchild, that I was kind of shocked at it, because I thought everybody knew Wiley Fairchild. Of course Judge Nixon comes from a political, you know, very popular family down on the coast and I assumed everybody knew Wiley Fairchild, but that he didn't know him. And he indicated to me that he had a chance of maybe doing some investing with him and I gathered that what he was doing was trying to find out if I thought it would be, you know, if he would be a legitimate type person from it.

And I remember my, my impression was that Mr. Fairchild has a reputation of always getting close to people like governors --

MR. FAWER: Excuse me, Judge, may I please? I assume the question was what was said by each party, not what the impressions were, in his mind at the time. You don't really want that, do you?

BY MR. WEINGARTEN:

Q. Mr. Holmes, if counsel wants me to specifically direct you, what was the conversation you had with Judge Nixon about this particular matter?

MR. FAWER: I think he gave us that.

THE WITNESS:

A. My advice to him was that if Mr. Fairchild wanted him to do some investing with him, I felt it would be very, very safe, that I did not feel Mr. Fairchild, with the reputation that he had, would be any way that he would lose money investing with Mr. Fairchild.

BY MR. WEINGARTEN:

Q. You said that to Judge Nixon?

A. Right.

Q. Did there come a time when you got involved with Drew Fairchild's case?

A. Yes, sir.

Q. When was your first involvement?

A. My first knowledge or involvement?

Q. Start with knowledge.

A. Okay. There was a drug bust out at the Hattiesburg municipal airport, I don't remember the exact date, but it was sometime in 80, along about mid summer of 80, and the bust occurred out there. They made some arrests of some people that were in my area, but the federal government wanted to handle the case. Subsequent to that -- let me back up.

I had knowledge of the fact that Drew Fairchild had a lease on the airport and I had knowledge that the Mississippi Bureau of Narcotics had had the place kind of under surveillance out there because there had been a lot of planes and rumors about movement of dope out there and I talked with the bureau about it. The bust occurred because it involved the federal government following the airplane in. The federal government took jurisdiction of the case.

Bill Porter, who represented the airport, as well as Drew Fairchild, came to see me, told me that --

Q. Did you have a relationship with Mr. Porter?

A. Bill Porter and I are very close friends, yes, sir. Of course he was later killed in an airplane crash but Bill Porter came to me and said --

MR. FAWER: Excuse me, Judge, can we just have some dates, some relevant period?

MR. WEINGARTEN: I think Mr. Holmes is starting from the beginning and following through. I think it's very clear from his testimony when he's talking about.

MR. FAWER: I'm asking if it can be dated within a week or a month. Can it be done. We know the bust as on August 4.

MR. WEINGARTEN: Your Honor, may I elicit information from this witness as I choose?

MR. FAWER: Your Honor, I believe I have a right and a perfectly proper objection that a witness, when he gives a conversation I have the right to ask for the time, date and place within some reasonable parameters.

THE COURT: He has the right to bring it out the way he wants to bring it out and not the way you want it brought out.

MR. FAWER: I agree. He has an obligation at some point to give an approximate date.

THE COURT: He just got started, so give him a chance. Proceed.

THE WITNESS:

A. Sometime after the bust, and I'll be frank, I don't know how long, whether it was a day, a week, you know, when, but Bill came to my office and said that that they were accusing Drew of being involved with the dope bust out at the airport and that he wanted to know if I would call George Phillips, who was United States Attorney, who had been my county attorney up 'til a short time before that and make a recommendation whether he could go up there with him and I recommended to Mr. Porter, you take Drew up there, sit down, cooperate with the federal government, and cut the best plea bargain he could and I called George Phillips and he carried him up there.

Q. I neglected to ask you before who George Phillips was?

A. George Phillips was the county prosecuting attorney in Forrest County, I was the district attorney. The United States Attorney retired and George Phillips got appointed United

States Attorney.

Q. Okay. In fact did you make a call to Mr. Phillips as you remember?

A. Did I call him?

Q. Yes.

A. Oh, yes, I called him and set up the appointment.

Q. Can you tell us when you called him in relationship to the conversation that you related to with Porter?

A. Probably the same day, he could have very easily been in the office. That would have been the way I would have done it if he was there, I'd pick up the phone and call (gestures).

Q. To your knowledge did Drew and Porter drive up to Jackson and have a conversation with George Phillips in the United States --

A. I don't know.

Q. You don't know what happened in Jackson?

A. No, sir. What I'm saying, they did go and apparently reached a plea bargain agreement because I saw it.

Q. How would you know that? Oh, you saw it?

A. Yeah, I saw it written out.

Q. What happened thereafter? What involvement in the subsequent months did you have thereafter in the bust at the airport as DA?

A. Nothing really. I mean from that point forward I didn't have anything else to do with it. We were preparing to present to the local Forrest County Grand Jury, the fact that the bust was out there, that it had taken place, that the federal government was going to handle it. And it had been handled. At the same time and basically through a casual conversation, Mr. Porter was in my office, I asked him whatever happened to Drew? Whatever happened in the drug bust out there? I assumed, and Bill told me he worked out a good, real good plea arrangement in Jackson and he got to fussing, saying Drew never even paid me after I did all that work and went to Jackson a bunch of times and everything. And I said he didn't? Well, I said, I'm getting ready to present to my Grand Jury over here, not for indictments or anything, I was going to present what happened, and I'm going to call George Phillips to see what the status of it was.

I picked up the phone, I called George, I asked George about it, told him that Bill was in my office, that Bill was fussing about the fact that he hadn't gotten paid. I wanted to present it to the Grand Jury down here, not for indictment necessarily, and George told me, he said, well, he said we never did indict Watkins, the pilot, and we never did indict Drew and why don't you go ahead and handle the case down there?

And I said, okay, y'all never got indictments on them, I'll be glad to go ahead and/or I could have asked him, do you have any objection, I'll be glad to handle it here.

Q. You made the phone call?

A. Yes, sir, I made the phone call.

Q. And you were is soliciting information about the case?

A. That's right.

Q. So who do you think made the request, you or George Phillips?

A. What? To bring it down here?

Q. Yes.

A. I told him bring it down here, I'll go ahead -- I don't know. I know I was -- I probably asked for it.

Q. Did George Phillips express any opposition to it?

A. Oh, no. George said that's fine. Best I recall he said why don't you go ahead and indict the pilot? I said sure, send it on down.

Q. What action did you take?

A. I turned it over to Katie Madison, who was my assistant.

Q. And was the case indicted by the state?

A. Yes, sir. We called then and sent out subpoenas and sent out subpoenas for the Mississippi Bureau of Narcotics, Eddie Dickey and Mike Tyson came in. They presented it to the local Forrest County Grand Jury and they asked for indictments on Robert Watkins, the pilot, and on Drew Fairchild.

They did not ask for indictment on Robert Royals, although his name was in the group. Later on I found out the reason they didn't, because Mike Tyson said the Mississippi

Bureau of Narcotics didn't have enough evidence on him to make a case and Drew had given a statement to the federal people saying Robert was not involved in the thing. And so, based upon that, they didn't have anything to travel on.

Q. All right. So the indictment returned by the state named two defendants?

A. Named two defendants, yes.

Q. Is it fair to say the triggering mechanism for that indictment was Porter coming to you?

A. I'd say that's the thing that brought it to my attention, yes, but although I was going to present it anyway. But the triggering mechanism was the fact Bill was up there fussing Drew never had paid him.

Q. What was the -- How was the case worked out? What developed?

A. Okay. Drew came in after he was indicted, he entered a plea of not guilty, we set it for-trial in the following January. We were preparing to try the case and Robert Watkins, who was a fugitive at that time, we couldn't find him, came up being located out of Dallas, Texas. They, it was brought to our attention that they had him and that Texas was getting ready to release him, because he was claiming he'd never been in Mississippi.

Katie came to me, as I recall, someone came to me, and I assume it would have been Katie, we got to have somebody that can identify Watkins, otherwise Texas is going to let him go. I picked up the phone and called Bill Porter, told Bill that I would be willing to make the same identical plea bargain arrangement with his client, Drew Fairchild, if he would cooperate with us in the identification.

As I recall, I tricked him into believing that Watkins was going to come in and testify against Drew and Bill said he'd call me back, which he called, he called Drew Fairchild, called me back and said yes, he'd be willing to do that, you know. We can work it out. He would be willing to plead guilty on that basis and not be sentenced until after he testifies against Watkins.

Q. Is it fair to say Drew Fairchild pled guilty in state court under your supervision?

A. Yes, under that or -- Katie, of course, handled it. He did plead guilty and the deal was he would not be sentenced until after he testified against Watkins.

Q. Okay.

A. At that time Watkins was in custody in Texas.

Q. And that was in January of 1982?

A. Yes, sir. That would be correct.

Q. Did it come to your attention sometime thereafter that Judge Nixon was interested in Drew's case?

A. Yes, sir. He pled guilty, when I say interested in, let me be perfectly candid let me just say what occurred. I don't want to, you know, the first time that Judge Nixon ever mentioned Drew Fairchild, the first time that I have any recollection of it, was after we had been on a hunting trip at Vicksburg.

I brought two turkeys back to Hattiesburg. Judge Nixon was in town, he came by the district attorney's office on a Friday afternoon, he was on his way back to the coast. Carroll Ingram, according to my recollection, was with him, you know, that day. We are riding out to the farm to pick up the turkeys. We had had --

Q. Who was riding out to the farm?

A. Judge Nixon and I was driving. He had left his car up at the district attorney's office. And we had had, likely or not, it was a Friday afternoon, we probably had a drink up in the office Friday afternoon, maybe two.

We was riding up to pick up the turkeys, this would have to be 6, 6:30, 7 o'clock, riding out, and Judge Nixon told me, he said, Bud, I never would have asked you to do anything against your oath of office, never asked you to do anything embarrassing to you, wouldn't ask you to do anything wrong. I said, yes, sir. He said, I was out at Mr. Fairchild's and he asked me to put in a good word for his boy, or would I say something to you about Drew. -- I think, I don't think he said Drew, I think he said his boy. I said, you know, well, I don't know. I don't know. What is it you want? You want an apology? I don't know. What does the man want?

Q. Are you saying did you say that to Judge Nixon?

A. Yeah, that was about my response. I can't remember this, because as I recall this was like in May of 82, you know, when this occurred. But that was about my response, I mean, I was feeling rich and good-looking and, you know, that would have been my typical type answer.

He said I'm not asking you to do anything, I'm just saying that Mr. Fairchild asked me to put in a good word. Well, I knew Mr. Fairchild and the judge were kind of getting to be buddy-buddies there.

Q. How did you know that?

A. Pardon?

Q. How did you know that?

A. He had told me, or Carroll Ingram had told me that they were or he told me, could a come from Mr. Fairchild.

Q. Did he tell you why he'd called Mr. Fairchild?

A. He could have. I don't recall offhand, it seemed like he might have told, somewhere during the conversation I knew there was a chance he was going to make some more oil and gas investments with him. Seemed like he said maybe Mr. Fairchild said they were going to take a trip somewhere, you know, now what point in time, I don't remember but all this was, at that time it was nothing real important to me to really remember, so, don't hold me and say it occurred on that time but general impression I had was they got to be on a first name type basis and friendly. So, I took it on myself, said, well, judge, hell, I'm district attorney, I'll pass it to the files. And he said no, I'm not asking you to do that. Now, I'm not asking you to do anything now.

Well, okay. We rode on out to the farm, got the turkey, went inside. I asked him to come in, have a drink.

Q. Whose house did you go to?

A. Go to mine, which was out in the Barrington community. We went inside. He said that he'd come in and have a drink, if I had some Royale Salute, that's kind of a joke between us, very expensive scotch whiskey, somebody gave it to me for Christmas a year earlier and I said I did. He came in, we had a drink, probably had a couple of drinks, and I had told him that I had already had this arrangement worked out with Bill Porter, the man had the same agreement that the federal court had offered, which was probation and a fine, in return for his cooperation. He said do you mind if I call and tell Wiley? Or he could have said, Wiley, Mr. Fairchild. He said did he know? I don't know. I assume he did. Carroll Ingram sure knew it. And so he said do you mind if I tell him? I said no, I don't care.

So he called him and as I recall the conversation it's something like --

Q. Who made the telephone call?

A. Pardon?

Q. Who made the telephone call?

A. He did. And he told him, he said, I'm out at, said do you remember the man we were talking about today? I'm out at his farm and he tells me that your son isn't going to jail, which was true, you know, because of the plea arrangement and I just wanted to call and tell you that. And he thanked him, told him I appreciate you letting me make some of these investments, you know, with you, and he said, you know, the judge's salary and the number of children that I'm trying to educate and so forth, it was kind of hard and I do appreciate this opportunity.

And, with that, I told him, I said let me speak to him. And I picked the phone up and I said, Mr. Fairchild, I want to let you know, I hope you don't think there's anything personal about Drew and us and he said no, I never thought that. I'm real embarrassed about that and so forth and I take full blame here because Judge Nixon did not ask me to say or do this, but I told him, I said, I said I want to let you know that I want Judge Nixon to have credit for helping the boy. Of course I was misleading him because I already had the arrangement worked out with Bill Porter.

And I told him, I said I'm going to pass the case to the files. You know, I told Mr. Fairchild that. And that was, you know, basically the sum and substance of it.

MR. WEINGARTEN: Thank you. Is this a good time to break, Your Honor?

THE COURT: We'll recess until nine o'clock in the morning.

(End of volume six.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA

V. CRIMINAL ACTION NO. H85-00012(L)

WALTER L. NIXON, JR.

BEFORE: The Honorable James Meredith
Senior United States District Judge

DATE: January 31, 1986

-PLACE: Hattiesburg, Mississippi

VOLUME 7

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(OPEN COURT:)

(Mr. Weingarten continuing with direct examination of Mr. Holmes:)

THE COURT: Proceed.

MR. WEINGARTEN: Thank you, Your Honor.

BY MR. WEINGARTEN:

Q. Good morning, Mr. Holmes.

A. Good morning.

Q. Mr. Holmes, when we broke yesterday we were talking about an event that took place in your home. Can you just set the stage again? Where again do you live?

A. I live out on the other side of -- it's a town that connects Hattiesburg that's called Petal community, but it's the Barontown community. It's about eight miles as the crow flies from here.

Q. Do you refer to it as a farm?

A. Yes, we refer to it as a farm. When Jim Dukes and I bought the place, it was a farm. He lives out there and I live out there now, too, and we always referred to it as a farm.

Q. Is it in fact a farm?

A. Yes, sir. We grow soybeans out there and have pigs, hogs, you know, cattle, corn, grew a lot of corn this year.

Q. Is it to that farm that you and Judge Nixon drove?

A. Yes.

Q. Where is the DA's office?

A. As the crow flies from here it would be about four hundred yards right back behind the courthouse here.

Q. Right in town, in Hattiesburg?

A. Yes, sir.

Q. And did you testify yesterday that you drove with Judge Nixon from the courthouse to the farm?

A. Yes, sir. District attorneys office.

Q. When was the --

A. The complex, I probably called it the complex, the district attorney's office it's called the law enforcement complex but it's right behind the courthouse. We call it the complex.

Q. When did you first realize Judge Nixon was talking to you about Wiley's son?

A. I'd say about halfway out there to the farm.

Q. And what did he say?

MR. FAWER: Excuse me, Your Honor. This entire conversation was questioned about, question and answer,. yesterday. It's been gone right through, what took place in the car, what took place at the house and he's just going over it again and it's as if he wants to play the tape again. I object as it's repetitious.

MR. WEINGARTEN: I have very few questions. I'm asking specific questions about points that were not answered yesterday.

MR. FAWER: There's nothing specific about what did he say?

MR. WEINGARTEN: What specifically did he say.

MR. FAWER: I can read from yesterday's transcripts, that's the same question he asked yesterday. He's trying to put on the record twice what is already on the record once. If he can show it was not done yesterday, I withdraw my objection. I can show Your Honor where it was precisely questioned about what was said getting in the car, going in the car, getting out of the car and going in the house and what was said in the house.

MR. WEINGARTEN: Your Honor, I think I'm entitled had to clarify a few points about the witness' testimony.

THE COURT: Overruled, proceed.

BY MR. WEINGARTEN:

Q. Would you like me to repeat the question?

A. Yes, please.

Q. What specifically caused you to know that he was talking about Wiley Fairchild's son?

A. Words to me were a, he'd been out to Wiley's and that Mr. Fairchild -- I'm trying to get which sequence it was. The sequence, as I recall it, was I never would ask you to do anything against your oath of office, never ask you to do anything that would be embarrassing to you, I'm not asking you to do anything, but during the sequence of which came first, I don't remember. But he said, Wiley asked me to put in a good word with you for his boy.

Q. In what context?

A. As I recall, he told me that to begin with, he never would ask me to do anything wrong, do anything against my oath of office, anything that would be embarrassing to me, and I never would do that, but Wiley Fairchild asked me today to put in a good word with you -- He said, he asked me if you and I weren't good friends and I told him, yes, you know, we wer. And he said, well, would you mind putting in a good word for my boy?

Q. What specifically did the Judge tell you about his business or financial relationship with Wiley Fairchild?

A. Somewhere during the day, or during the event, he told me that he was talking to Wiley about making some more oil and gas investments with him.

Q. Did he mention anything about the previous investment?

A. I knew he had made some, you know, with him.

Q. Did he indicate to you how those investments were going?

A. I assume they were doing good because --

MR. FAWER: Wait a minute.

BY MR. WEINGARTEN:

Q. Don't assume.

MR. FAWER: Your Honor, with all due respect, this is supposed to be a lawyer on the stand who has some vague understanding of the rules of evidence.

MR. WEINGARTEN: We don't need any of your comments --

MR. FAWER: And we don't need to know what he thinks. Let's approach the bench and I think we ought to have some rules laid down that follow the rules of federal court. May we approach the bench? (AT SIDE BAR:)

THE COURT: He can't testify to what he assumes.

MR. WEINGARTEN: I understand that, but he doesn't have to make a speech.

MR. FAWER: He needs to be instructed to answer the question. Do you want to make a lecture to the jury or talk at the bench?

MR. WEINGARTEN: I see. And you haven't made any lectures?

MR. FAWER: Where are we at? You were the one who wanted speaking objections made at the bench when a speaking objection is made. You either deal with it in a lawyer-like way or don't deal with it.

MR. WEINGARTEN: You're dealing with it by making a speech about this man's legal capacity --

MR. FAWER: He's a lawyer and should know he's making an assumption and you're --

MR. WEINGARTEN: And I stopped him.

MR. FAWER: This is not Wiley Fairchild on the stand, this is not a man who has no understanding of the rules of court. I think the witness ought to be instructed --

THE COURT: Let's go back.

MR. FAWER: Could the witness be instructed to be responsive to the questions that are asked?

THE COURT: I'm not going to instruct him about anything. (IN OPEN COURT:)

BY MR. WEINGARTEN:

Q. Had Judge Nixon told you anything about the previous investment, or the prior investments with Mr. Fairchild?

A. Not that I recall on that particular day. I do know about him prior --

MR. FAWER: Just so we understand, is your question directed to this meeting?

MR. WEINGARTEN: Yes.

MR. FAWER: Then the answer has already been not at that time.

MR. WEINGARTEN: Thank you, sir.

THE WITNESS:

A. I know about it from prior --

BY MR. WEINGARTEN:

Q. That's okay. If I want it elicited, I'll ask it. Mr. Holmes, yesterday you said there was some drinking going on both prior to arrival at the farm and after arrival at the farm. Explain that please.

A. All right, sir. On Friday afternoon at the district attorneys office, sometimes on weekends, we will get in there, after we shut the office down and sit back in the office and some people around, whoever happens to be up there, whether they be at the sheriff's office, someone like that will come in there, the secretaries and they will have a drink or maybe two drinks before they go home, because they're not coming to work on Saturday. On this particular occasions, one of these occasions there was a couple of drinks, I know Fred Cook was up there, the football player.

Q. Did you and the judge have a drink or two at your office?

A. Yes.

Q. And did you and the judge have drinks once you arrived at your farm?

A. That's correct.

Q. How did this drinking affect it?

A. Well, just like any drinking affects it now.

Q. Did it impair your ability to recall?

A. No, sir, I'm recalling this.

Q. What did you and the judge do after the call?

A. We sat there and talked, you know, just exchanged pleasantries. I mean nothing of any significance, and then we left and went to Bonnie and Clyde's.

Q. Had the judge been to your office before?

A. Yes, sir.

Q. On more than one occasion?

A. Yes, sir.

Q. I'm marking Government Exhibit 20?

A. Beg pardon?

Q. I'm announcing to the Court I'm marking something Government's Exhibit 20. I hand you Government Exhibit 20. Ask if you can identify it, sir?

A. Yes, sir, this is an appointment book that Jimmie Pace, who is my secretary, kept. Quite frankly I did not know she kept the thing until after this grand jury proceeding started, I believe it came up, question how many times Drew Fairchild came to the office. I could only remember one time, and Jimmie told me she had the appointments book. I didn't know she kept the thing, but this is one she kept, her appointment book.

Q. Did she keep it for you?

A. To be frank, I don't know why she kept it. I assume it was for her. I didn't know she kept the thing.

MR. WEINGARTEN: I move into evidence Government Exhibit 20.

MR. FAWER: No objection.

(Exhibit No. G-20 marked).

BY MR. WEINGARTEN:

Q. Did you review that appointment book in an effort to date the call from your farm?

A. I did. Or she did for me.

Q. Did you also take a look?

A. Yes, sir.

Q. What did you find?

A. Found that on the date of May 14th was the date that the judge and Carroll Ingram appeared in there, it was written I believe on a Thursday, actually it was on a Friday, you can tell she was using the wrong column.

Q. Would you open that up to May 14?

A. Yes, sir.

Q. What do you find there, Mr. Holmes?

A. Wait a minute. I hadn't got it yet. All right. Got here, four and 4:15 on the date, says here May 13th, but it's really on May 14th.

Q. Why do you say that?

A. Because I know it was on a Friday, because I went to a wedding the next day in Jackson where Gary Turner got married, he got married on May 15th. I know an incident that occurred out at Bonnie and Clyde's that night is the reason Jimmie remembers it very well.

Q. When you go through that book, are there other occasions when Judge Nixon visits your office?

A. Yes, sir.

Q. I ask that you turn to June 24th?

A. All right, sir.

Q. What's noted there?

A. At two o'clock Judge Nixon is in there.

Q. What about July 16th?

A. No, sir. All I see is George --

Q. How about July 16th?

A. 16th? I thought you said 15th. Yes, sir.

Q. What day of the week is July 16?

A. July 16 is on a Friday.

Q. What about October 20?

A. Carroll Ingram and Judge Nixon both.

Q. What day of the week is October 20?

A. October 20 would be on a Wednesday.

Q. Okay. Now following the call from the farm, how did you handle Drew's case?

A. I let it just sit until December, passed it to the file.

Q. Did you feel that you had incurred any obligation as a result of what happened at the farm?

A. Yes, sir.

Q. What was that obligation?

A. Felt like I had made a promise to Wiley Fairchild that I was going to pass it to the files.

Q. What does it mean to pass the case to the files?

A. Pass to the file literally means move it from the active docket to the inactive docket.

Q. What is the legal significance of that?

A. Just remains inactive until some one brings it back out.

Q. Who has the authority to pass a case to the file?

A. Well, the district attorney -- I can recommend it, but the court is the one who actually has to sign the order. Court can refuse to pass one.

Q. Did there come a time when in fact you passed the case to the files?

A. Yes, sir. Well, I recommended it, I mean I filed a motion asking the court to enter an order passing it. But that's technical, from a practical point of view, say I passed it to the file.

MR. WEINGARTEN: May I have the Government Exhibit passing it to the files?

BY MR. WEINGARTEN:

Q. I hand you Government Exhibit 4, ask if you can identify it, sir?

A. Yes, sir.

Q. What is that?

A. That's an order passing it to the file.

Q. Who prepared that order?

A. Actually Glenn White dictated it, and I believe my secretary, Jimmie Pace, typed it, I believe.

Q. Who is Glenn White?

A. Glenn White was my assistant district attorney. He did it at my instruction.

Q. What legal reason is given for passing the case to the file?

A. I can read it to you if you want.

Q. Just summarize if you can?

A. Been a period of time in there since the plea of guilty that we'd been trying to bring in Watkins, who Drew was going to be testifying against, weren't going to sentence him until after Watkins had testified, and that it was made known that -- in the grand jury, spelled out in here, Drew had cooperated, he had cooperated, he's the one that signed the affidavit on him, and on the strength of his affidavit we were able to hold Watkins out in Texas for extradition purposes.

Q. Is all that true?

A. Yes, sir, that was true. All that was true.

Q. All right. Why did you order Glenn White to make the request to pass the case to the files?

A. Well, like I said, because I felt, primarily because I had told Mr. Fairchild on the phone that I was going to pass it to the file.

Q. Why did you do it at this particular time?

A. Well, of course the big motivating thing at this time was Judge Weldy was leaving office. Bill Porter, who represented Drew Fairchild, was raising cain with me because Judge Weldy was leaving and he had supported Judge Weldy, Judge McKenzie was coming on in a matter of a few days, Judge McKenzie was going to be able to have the power to totally ignore any kind of plea bargain we had and go ahead and sentence him to the full five years, three years, whatever the maximum was. Bill was afraid that's exactly what Dickie was going to do, Judge McKenzie was going to do. So he was fussing about it. I had already made the promise to Mr. Fairchild that I was going to do it, so I just did it.

Q. What was the status of Watkins at this time?

A. At that time he was fighting extradition. We had him down in Florida, and he was opposing extradition. They had a lawyer down there by the name of Bowman who was actually contesting bringing him back up here. We were in the process of trying to get him up here. They were in the process of trying to keep us from it.

Q. Had there not been the call to Wiley Fairchild, would you have moved to pass the case to files in December, 1982?

A. No, sir, I would have -- what I likely would have done --

Q. Don't testify to that.

A. I'll tell you what I would have done then.

Q. No, only what you did?

A. I passed it to the file is what I did.

Q. All right. How long did the case remain in the file?

A. About three weeks.

Q. And what happened?

A. Well, I brought it back out.

Q. Why?

A. Well, got Watkins got back up here where I could prosecute him.

Q. What was the motivation to take the case out of files at that time?

A. Well, because I had made the statement once Watkins got back I was going to open it up. That and the fact it was an awful lot of publicity on it, the television, newspapers had picked it up, they were talking about the fact this very wealthy, son of a very, very wealthy man in Hattiesburg, like his case had been swept under the rug, they were editorializing about it. I made the public statement that when we got Watkins got back up here I was going to bring it back out of the file if we could get him. One thing I'd like to point out, we had a very similar case on another drug bust where all the people were from Tennessee, just like this one, we thought we could extradite them and the federal courts in Tennessee wouldn't let us extradite the people back Hattiesburg to try them. There was a big question whether we could even get Watkins out of Florida. We did work out an arrangement where he did come.

Q. What happened to the Watkins case in 1983?

A. In 83?

Q. Once Watkins came back?

A. He came back, put under hundred thousand dollars bond, he remained under hundred thousand dollars bond from down there. That was all part of the arrangement, you know, his lawyer agreed to it. Came back up here, set the case for trial, and he jumped bond again.

Q. So Watkins was not prosecuted?

A. No, sir, it was set for trial.

Q. What happened to Drew's case?

A. Drew's case just remained, just there again, go back, he was not to be sentenced until after he testimony. That was part of the plea bargain agreement.

Q. When did you leave office?

A. I left office January 1st of 1984.

Q. What was the status of Drew's case?

A. It was still on active docket, waiting to be sentenced.

Q. And after you left office did it come to your attention the Department of Justice was conducting an investigation in the Southern District of Mississippi?

A. Yes, sir.

Q. Where did you learn that first?

A. I didn't realize who it was. Got a call one day from Judge Nixon, he was quite, quite incensed that some people had been by to see him -- I didn't know who it was, he didn't say who it was -- inquiring of him whether or not he had tried to influence or did influence the handing of the Drew Fairchild case.

Q. Was this a face to face conversation you had?

A. No, sir, this was a telephone conversation. I later had a face to face conversation with him.

Q. Start with the telephone conversation, what was said by Judge Nixon?

A. He told me some people had come by and were accusing him, I say accusing him, someone had made some accusations that he had been involved in trying to influence or did influence the handling of the Drew Fairchild case, and told me he told them he had never talked to anyone, didn't know anything about the case, he never talked to anyone at any time about the case, he had nothing to do with it, he said that's what I told them. I said okay.

Q. Did you -- continue, please. Was that the extent of the conversation?

A. That was pretty well, very, very emphatic he had never talked to anybody and never talked to anybody, didn't know anything about it, never had any contact with anybody. So I just said yes, sir.

Q. Was that true?

A. No, he and I talked about it.

Q. Did you contradict him?

A. No.

Q. Why not?

A. Well, wasn't, I just didn't get in an argument with him about it. That's what he said, I just accepted it face value, if that's your position that's your position. I'll go along with it.

Q. Did you subsequently have a face to face meeting with Judge Nixon?

A. Yes, sir.

Q. How soon after?

A. I'd say the next, oh, couple weeks. Whether that was before I met with you all or after I don't know. I do know I had a face to face meeting.

Q. Where was the face to face?

A. It was down in Biloxi at his chambers.

Q. What was discussed there?

A. He had told me again that people, you know, about people coming by to see him, he was again very, very angry, you know, about somebody making these type accusations about him having anything to do with it. He was very emphatic, saying I never talked to anybody in the federal system, never talked to anybody in the state system. I've had nothing to do with it in any way in the world. I remember he said if I thought these minerals or anything I've done with Wiley, anything to do with that, I wouldn't be involved with them, just on and on. He asked me then if I could, if I knew whether or not the conversation we had from the farm was taped, and I told him I had no way of knowing, asked me to find out.

Q. He asked you if you could find out?

A. Yes.

Q. Had you taped the call?

A. I didn't, no.

Q. How did you respond to Judge Nixon when he told you he never discussed the case with anybody on the state level?

A. I didn't argue with him. Didn't dispute him.

Q. Did you affirm or confirm?

A. Pardon?

Q. Did you indicate to him that was your understanding?

A. Well, in my mind I thought --

MR. FAUER: Excuse me. The question is, I think, what he said, did. Am I correct? Is that what you're inquiring?

MR. WEINGARTEN: Yes.

BY MR. WEINGARTEN:

Q. Just answer the question.

A. Okay. He told me that, Mr. Weingarten, I don't remember specifically saying, if that's what you want me to say I'll say it, you know. I don't recall making a verbal statement to that effect, but that was my position on it.

Q. When he asked you to find out if the call was taped, what did you do?

A. I went to Carroll Ingram.

Q. Did you ask him?

A. I did.

Q. What did Carroll say?

A. Carroll said that he knew, he did not know Mr. Fairchild had any tape recording out there at his house, that it was just no -- he didn't believe it, that he thought, he said Mr. Fairchild generally by six thirty, seven o'clock at night would generally be out of it from drinking, and that he knew, did not know of him having any type of taping. He never heard about it anyway.

Q. Did you --

A. He never heard about it anyway.

Q. Did you report that information back to Judge Nixon?

A. I'm sure I did. I can't remember the date, but I told him.

Q. When did all these conversations take place?

A. I guess in around the time of the first investigation started.

Q. Can you be any more specific than that?

A. Well, when was the investigation?

Q. You answer the question as best you can.

A. Well, it would have to be in the, been in, I guess, April of 84, I assume, or May, I believe. It's right in that time. In the springtime of 84.

Q. Do you recall being interviewed by the FBI?

A. Yes, sir.

Q. Do you recall it being April 25, 1984?

A. That was the date of it, yes, sir.

Q. Were these conversations with Judge Nixon, when would they have taken place in connection with the FBI interview?

A. I would say both before and after.

Q. Did there come a time when you had conversations with Carroll Ingram about the call?

A. Oh, yes.

Q. Did there come a time when you learned that Carroll Ingram may have cooperated with the federal government?

A. Yes, sir.

Q. When was that and under what circumstances?

A. I'm going to say it was later on in the year or following year. I'm trying to get my sequence. I'd say along about probably in, probably along about in January or February, probably.

Q. Of what year?

A. Probably 85.

Q. And what did you learn?

A. He told me that he had been to Washington, that he had given a statement that, to the effect that I had told him that the only thing I was concerned about was the telephone call from my farm.

Q. Had you in fact said that?

A. I did. I told him, you know, in our conversation that, the rest of the bull thrown at me, I knew there was no substance to that, but there was substance to the fact that we did have that phone call and I covered it up and I was concerned about and that was the only thing I was concerned about.

Q. When Carroll Ingram advised you of that, what did you do?

A. I told him. I said, Carroll --

Q. Forget the conversation.

A. Okay. What did I do? I came back over and I talked with Jim Dukes about it, told him about the turn of events. I thought that it was only proper that --

MR. FAWER: Excuse me. These are conversations where he's talking to his attorney, I assume? Am I correct?

BY MR. WEINGARTEN:

Q. Is Mr. Dukes your attorney?

A. He is now, at that time I didn't have one. I didn't think I needed one.

MR. FAWER: I would object to any conversations. I've sat back and let a lot of hearsay conversations go in about Carroll Ingram. Of course I assume he's going to be here. Jim Dukes is a law partner of the witness and I object.

THE COURT: Sustained.

BY MR. WEINGARTEN:

Q. Do you have any conversations or meet vis-a-vis with Judge Nixon at this time?

A. Yes, I called Judge Nixon, told him I needed to talk to him, thought we needed to go talk. He was over here, waiting, had a jury, I believe was out, and we sat in his car and talked and I told him about my conversation with Carroll and --

Q. What time of day was this?

A. This was, I'm sure, probably 7 o'clock at night. It was dark.

Q. And where were you?

A. Downstairs, right outside the courthouse.

Q. Outside of this courthouse?

A. Yes, sir.

Q. What arrangement had been made to meet Judge Nixon?

A. I called him on the phone, he told me we'd meet in the car, he'd be downstairs, he had a jury out, he didn't feel he could leave from here.

Q. You proceeded from your office to the parking lot?

A. Yes.

Q. What happened then?

A. I just told him about my conversation with Carroll.

Q. Let's just make it clear. Did you see Judge Nixon?

A. Yes, he came down, sat in the car, as I said, in his car. We sat in the car, I told him I talked to Carroll, that Carroll had told me that he had told about the phone call and so forth and I was trying to encourage him, let's go ahead and tell about the thing, because I didn't see there was anything to hide on it, that, you know. There was nothing about the phone call to hide that was of any, you know, just didn't see any, you know, sense in it. And his basic response was he didn't know what I was talking about, he didn't know about the phone call and then chastised me and wanted to know why I told Carroll about it. And I told him about the tapes and I said, by God, you're the one who asked me to find out, because there's no skin off my teeth, I mean the phone call, I had done absolutely nothing from a criminal point of view, didn't see where he'd done anything, you know, about calling Mr. Fairchild, saw no reason to hide it. And that was, you know, my position on it.

Q. And how did Judge Nixon respond?

A. Basically that he didn't know anything about a phone call.

Q. Have you had any other conversations with Judge Nixon about the phone call?

A. Yes, sir. I had one more and that was at Sam Patterson's party, it was the former chief deputy marshal, at the retirement party. I saw Judge Nixon down there and I was getting ready to go to trial myself, I had been indicted, and the only thing I was really concerned about in the indictment that the government brought against me was the part about the phone call, and I told him that we needed to get together, talk about it and he told me, he said, well, I don't know why you picked up the phone and called Wiley and told him that you were going to honor the deal with Bill Porter. And I said, well, Judge I don't know what you're talking about. And he said, I don't know why you called and told him you're going to honor the deal you had with Bill Porter. I said okay and that was the last conversation.

Q. I believe you just indicated that you were indicted by the federal Grand Jury in Hattiesburg?

A. Yes.

Q. Do you recall when that was, sir?

A. Pardon?

Q. Do you recall when that was, sir?

A. Seemed like it was in the spring of 85, I think.

Q. I hand you what's been marked as Government's Exhibit 21 and ask you if you can identify it?

A. Yes, sir. That's my indictment.

MR. WEINGARTEN: We move Government's Exhibit 21 into evidence.

MR. FAWER: The indictment itself or the plea?

MR. WEINGARTEN: The indictment.

THE WITNESS: The indictment.

MR. FAWER: Could we just approach the bench one moment, Judge?

THE COURT: Sure.

(Side bar.

MR. FAWER: Your Honor, I have no problem with this except one thing, I don't think the jury should see this. Counts one, two and three concern basically the same matters as this case do. As you get to counts four and five, as Mr. Weingarten knows, count four is basically a 404 B charge. I --

MR. WEINGARTEN: It's not a 404 charge.

MR. FAWER: Yes, it is.

MR. WEINGARTEN: Why don't we make it easy? Are you going to cross-examine him on his guilt on these?

MR. FAWER: Why don't you question him on --

MR. WEINGARTEN: If the answer is no, I'll withdraw it.

MR. FAWER: -- the remaining counts four and five, that's all you got to do? The allegations have nothing to do with this case, they have to do with Senator Burgin and you don't want the jury nor the Judge having any allegations not related to this case.

MR. WEINGARTEN: It's really simple, if you will say you're not going to cross-examine him on them, I'll withdraw it.

MR. FAWER: I'm not going to make that commitment, not about questioning if he has two charges they dismissed, they relate to two conversations they claim he had, that he denied, with an ex-Senator Burgin in the house, the legislature here in Mississippi, which it is, not in any way tied into this case.

THE COURT: Did he plead guilty?

MR. WEINGARTEN: He plead not guilty, there was a plea bargain, if there's not going to be any cross-examination, will not go into one, two and three, I have no problem just on count four and five.

MR. FAWER: What's the matter with you --

MR. WEINGARTEN: Because there's going to be evidence, I'm sure, that this man thought he was going to be charged --

MR. FAWER: Not about that, I'm not going to, -- Do I have to tell you again? I'm not going to question him about

Burgin or about that? You want to hear it again.

MR. WEINGARTEN: Well, what I'm going to do is not introduce it this at this time. I'll let Mr. Fawer have his cross and if I want to introduce it later, I will.

MR. FAWER: That's fine.

THE COURT: Okay. (IN OPEN COURT:)

BY MR. WEINGARTEN:

Q. Mr. Holmes, you indicated, you were indicted by the federal Grand Jury?

A. That's right.

Q. How did you plead to the charges at arraignment?

A. Not guilty.

Q. Was a trial subsequently scheduled?

A. Yes, sir.

Q. Was a jury picked?

A. Yes, sir.

Q. And before evidence began, what happened?

A. Before evidence began, the attorneys, my attorneys and --

Q. We'll make it simple so that no conversations are elicited. Did you plead guilty to a reduced charge?

A. Yes, sir.

MR. FAWER: To what?

MR. WEINGARTEN: To a reduced charge.

BY MR. WEINGARTEN:

Q. Did you plead guilty pursuant to an information?

A. Yes.

Q. Pardon?

A. Yes.

Q. And was there a plea agreement?

A. Yes.

Q. I hand you what's been marked Government's Exhibit 22 and 23, ask if you can identify it?

A. Yes, sir, this is, 22 is the information and 23 is the plea agreement.

MR. WEINGARTEN: We move those into evidence.

MR. FAWER: No objection.

(Exhibit G-22 marked.)

MR. WEINGARTEN: I ask that they be read to the jury. Any objection, Mr. Fawer, to reading them to the jury?

MR. FAWER: They are in evidence, aren't they?

MR. WEINGARTEN: Government's Exhibit 22 Information, United States District Court for the Southern District of Mississippi. (Mr. Weingarten reads Government's Exhibit No. 22 to the jury.)

MR. FAWER: Excuse me, Your Honor may we have this read to the jury as he did before?

THE COURT: Guilty pleas entered by government witnesses may not under any circumstances be considered by you as proof of the guilt nor of the innocence or the criminal defendant. A criminal defendant is entitled to have the issue

A. Well, yes.

Q. That's a fair statement, is it not, Bud?

A. That's correct.

Q. Look, one thing, we're both attorneys. If I ask you anything that is confusing or if you think it's misleading, I want you to tell me that, okay?

A. All right.

Q. If you don't understand it I'll rephrase it.

A. Okay.

Q. Much, as I understand it, you view the trouble, or you in some way attribute the trouble you're in to what did you in an effort to help your friend, Judge Nixon, is that accurate?

A. Yes, sir, that's my feeling.

Q. Didn't you bring any of this trouble on yourself?

A. Yes, sir, I could have just come in just told it and ignored what I thought that my friend was wanting me to do.

Q. Let me ask you a little bit, we just looked at the indictment in the case, okay?

A. Yes, sir.

Q. I understand that early on, before you got into the case, before you got into the Drew Fairchild case, apparently, perfectly properly, Bill Porter came to you saying he represented Drew, correct? I'm talking about right after the drug bust?

A. Right, yes, sir.

Q. Nothing improper in that, right?

A. No, sir.

Q. He tells you about the problem and he brings Drew to see you, correct?

A. That's true.

Q. You give him some advice, not necessarily, I mean both as district attorney and as a private attorney, look, the best thing you could do is get up to Jackson as fast as you can, see George Phillips and cut some deal. I think that's what you can do in this case from the way I see the facts, is that right?

A. That's correct.

Q. Did you view that in any way as being anything improper on your part?

A. No, sir.

Q. Both as district attorney, and as a friend of Porter's giving some advice, perfectly proper, right?

A. True.

Q. And you made a call to George Phillips?

A. I did.

Q. George is a friend of yours, is a public official, assume at no time would you try to overreach George, right?

A. Never.

Q. You made a call, simply told him what was going on, you were sending these people up there, right?

A. Right.

A. Sure.

Q. The office isn't overly formal, right?

A. No.

Q. You ran a rather casual office, informal, let me put it that way?

A. Right.

Q. You say on Friday afternoons some people, friends coming in for drinks?

A. Right.

Q. How big a staff did you have at that time?

A. Two assistants.

Q. Katy Matison and Glenn White?

A. Glenn White, right.

Q. Glenn White is now the district attorney?

A. Right.

Q. Bill sort of was bemoaning the fact he hadn't been -- worked out this arrangement, it was a good deal, right? He had worked out a really nice satisfactory arrangement for someone like Drew?

A. Yes.

Q. From what you could see?

A. I initiated the conversation with him.

Q. Okay.

A. I mean I initiated the conversation with Bill because I was getting ready to present to it my grand jury just to let them know the drug bust happened, federal government was handling it, because we had had another bust similar, people had been inquiring about what whatever happened to the people.

Q. Just so we don't get -- you are you talking about the eighteen wheeler?

A. No, sir; this was one involving some people from Tennessee.

Q. Just so the jury understands, there had been some publicity about a totally unrelated case?

A. Two cases.

Q. By the way, what you were doing is presenting some information to the grand jury to assure the people that it was being handled on some level, even though it wasn't the state level?

A. That's correct.

Q. That was what you intended doing similarly on this case, rights?

A. That's right.

Q. You are an elected official?

A. Right.

Q. As an elected official, something goes wrong, somebody has a misperception in law enforcement, who takes the heat?

A. The elected official always does.

Q. You?

A. That's right.

Q. If it has to do with the district attorney's office?

A. Right.

Q. Having come off another case that got some heat --

A. Right.

Q. Didn't want any heat here?

A. Right.

Q. Didn't want -- wanted to tell the grand jury, present to them what had happened?

A. Right.

Q. You had no intention of doing any indicting or anything of that sort at that point?

A. At that time I was just -- no, sir.

Q. Okay. Basically just an informational type presentation?

A. That's right.

Q. And that's a perfectly legitimate function of a grand jury?

A. Sure.

Q. I take it, as far as you are concerned, while there is dual jurisdiction, the federal -- this was a case in which basically it started with a customs plane, the federal, interstate aspect, federal government was handling the whole thing?

A. That's correct.

Q. Okay. Okay. In any event, Bill comes in, you ask him -- tell us what you asked him?

A. I asked him whatever happened on the drug bust out there at the airport, you know, whatever happened. I thought they had that all worked out and were working undercover about it. Bill proceeded to tell me that he worked out this agreement you know for Drew, and that Drew never even paid him, made a number of trips to Jackson, so forth. He was just fussing about it.

Q. Okay. That was part of Bill's way?

A. That's right. He was griping.

Q. And did you say, hey, maybe I can help you collect your fee?

A. Probably, something about like that. You mean he never paid you? Yeah, just sitting there, you being an attorney, know this happens a lot of times, and you know, just normal kind of talk.

Q. Well, okay. He's this private attorney who represents a client, supposed to be protecting his interests, talking to you innocently enough, you then say something to him about maybe I can help you collect your fee?

A. Right.

Q. And you're going to do that by making a call to George Phillips?

A. Right.

Q. How were you going to help him collect his fee by calling George Phillips?

A. Whether I said it right that minute or later on, or not, Mr. Pawer, I don't really recall whether I said it right that minute. I know I called George for Bill and just asked Bill what the status of the case was.

Q. Well, I understand that. I'm having a little bit of a problem, because I sure -- if I'm a defense attorney, I sure don't want to be in a position of thinking that I could do anything to get my client indicted. I mean that would really bother me, okay?

A. Okay.

Q. So you're telling me as the highest elected law enforcement official in the state, you're talking to a private attorney?

A. Uh-huh (yes).

Q. You're going to use your office in some way to help him collect his fee, and I want to know how you were going to do that? I mean the call isn't going -- to get, I'm asking a second question, I just want to explain myself. Obviously to help him get his fee you got to send a message some place?

A. Right.

Q. You didn't expect by calling George Phillips for Phillips to bring a check to Porter?

A. No.

Q. There has got to be a message in that call; to send a message, you got to send a message to the person you want to receive it, right?

A. Right.

Q. Only one person I know needs to receive that message, maybe two. Drew, Drew don't have much money, Wiley does, right?

A. Right.

Q. Tell us how you were going to help him get his fee by making the call?

A. Mr. Fawer, it was not some concerted effort to help him, quote unquote, collect a fee. Bill was up there fussing about it, that's what brought it to my attention. The reason, the reason that I called was a two-fold purpose, like I tried to explain to you.

Q. I'm listening.

A. Find out about the status of the case from George on the one hand, and on the other hand I was going to relate to George about the situation and the fact that Bill never had even gotten paid, and I wanted to find out what the situation was up there.

Q. Why would George care about him not getting paid?

A. You live in a small community down here, these kind of things go on.

Q. Is it a case of you scratch my back, I'll scratch yours?

A. No. One of the most common things around the world in here in the practice is where one attorney will go, they will talk to a JP or justice of the peace, get people to continue cases because they hadn't collected their fee. Most common thing in the world is standing joke, whenever, they say have you been employed? No, I haven't been fully employed yet, meaning I haven't been paid. They will continue cases, these things happen all the time in the practice of law.

Q. I'm not, I'm hearing you, but I don't want to tell you I'm aware. You're telling me that judges will continue cases in order to guarantee that the lawyer gets his fee?

A. No, sir. No, sir, I didn't say that at all.

Q. Justices of the peace --

A. The prosecutors a lot of times will go in there and whenever they say are you ready to plead your man today, no, I haven't been fully employed, meaning by that I'm still waiting on my fee. A lot of times, I'm not ready to plead him yet, as you well know in criminal practice, which you generally handle higher type clients now, many many times in criminal practice, if you don't get your money, as you well know, up front, many times you don't collect it.

Q. Okay.

A. A lot of times they will hold out, you know, before they plea or work it out until they do it.

Q. Well, okay.

A. It's kind of that situation. It wasn't twisting his arm or doing anything to somebody to help him collect a fee.

Q. I understand. Here, of course, it was all -- Bill had made that classical error of doing that without getting the money up front?

A. I assume that's correct.

Q. Here you were going to do something for a friend to help him out, right?

A. Well, it wasn't the only thing, but that was a motivating thing for me to make the phone call. Whether Bill got his fee collected or not, let me say this, I was going to handle the case, after I talked to George. Bill got paid fine, if he didn't, fine.

Q. Start with you got to call George to get the case, right?

A. That's correct. No, no, not trying to get the case. Called George to find out the status of the case.

Q. George and you are a little bit at odds; George says you called and asked him for the case.

A. Okay. He can take a position. That's not my position on the thing.

Q. Okay. We don't want to get you at odds with an old friend. As I understand it, one way I guess to get the client's attention, one way of getting a message across, is to indict him, correct?

A. Present it, yes, sir.

Q. A little difference between presenting and indicting. Presenting you're just giving the grand jury some information. Indicting is the best message in the world, right?

A. The grand jury indicts.

Q. Mr. Holmes, why are you smiling? You and I both know what -- grand juries do what people like you as DA ask them and tell them to do, right?

A. Well, as a rule, that's correct.

Q. We're not going to spend a lot of time talking about that, are we?

A. Not unless you want to.

Q. I don't think we have to. I don't think they're naive enough to think otherwise.

A. All right.

Q. Okay. Best way to send a message is to at least threaten to have an indictment or to actually indict, right? That's a loud and clear message, right?

A. That's generally very loud and clear message.

Q. Government send you one of the loudest messages you ever received on March 29th?

A. Very loud, that is correct.

Q. Okay. So is it fair --

A. I already paid my attorney.

Q. Excuse me?

A. I had already paid my attorney.

Q. Unfortunately perhaps you did. Unfortunately for you. In any event, you were doing something to help Bill, and that's what really was the motivating factor in calling George Phillips?

A. I would say that was primarily the motivating cause.

Q. It was primarily to help Bill collect his money?

A. Well, I couldn't necessarily put it in degrees. That was a certain strong motivating thing.

Q. Primarily to help him collect his money?

A. Call it that.

Q. I'm calling it, because I got the best source in the world.

A. Yeah.

Q. You and the grand jury?

A. Correct.

Q. Right?

A. That's right.

Q. You're telling us that's your primary motive?

A. That's right.

Q. And therefore if that's your primary motive, then you're going to do something to accomplish your primary motive?

A. Well, like I said in the grand jury, going back to it, I planned on presenting the case anyway to the grand jury.

Q. Presenting is just telling the -- you could have handed them a piece of paper to tell them what happened?

A. If George Phillips said he still had the case and wanted tc proceed with it and not fool with it, I would not have gone any further with it.

Q. Let's cut through. You called him, found out -- you knew at this point Drew hadn't been indicted?

A. I did not know he hadn't been indicted.

Q. I beg your pardon?

A. At the time I called George Phillips I did not know, because Bill Porter didn't.

Q. His lawyer didn't know his client hadn't been indicted?

A. Said he hadn't heard from him.

Q. If you don't hear, that's the best news there ever is, right? You hear when there is an indictment, right?

A. Well, generally.

Q. Bill Porter was his attorney of record, right?

A. Bill told me he didn't know what became of the case, quote unquote.

Q. Go ahead. Look, maybe I can help you with the fee, not with him there, you call George -- you call George, inquired of the status, found out that Drew had not been indicted, correct?

A. Right.

Q. As far as George knew he wasn't cooperating?

A. That's correct.

Q. You asked if you could handle the rest of the case?

A. I told him I was going to present it, George said why don't you go ahead and present it for indictment; indict Watkins while you're at it.

Q. Are you really telling me this was all George's idea?

A. No, sir.

Q. It was yours?

A. I've never said it was.

Q. And you were doing it primarily to help your buddy Bill?

A. I would say that was a primary motive when I called.

Q. Would you think it's a fair statement, Mr. Holmes, to think that's sort of a misuse of the system?

A. I would say it was, yes.

Q. I mean I don't want -- you've got enough, in all serious, Bud, it's a problem. It's a, that's a corruption of that system. Everybody expects you to be doing things in an even handed manner, and actually at least with this friend, you're doing him a favor, you're going to get -- in effect have him cause his own client to be indicted, correct?

A. Well, no, sir. I was going to present the case anyway, just happened to be working out that way.

Q. In hind-sight, you would view that conduct as disgraceful, right?

A. Yes, sir. It happens all the time, but I guess it would be.

Q. Speak for yourself, because I know a lot of district attorneys would not like to be viewed as ever having been participating in that kind of conduct.

A. Okay, I'll speak for myself. I know a lot of them that do.

Q. Okay. In any event, regardless of the ultimate motivation, the month and a half, six weeks of the time that you spoke to Bill Porter and George Phillips, you turned the case over to Katy Matison and had her, or instructed her to work up the case, present it to the grand jury?

A. That's right.

Q. And an indictment sure enough is returned against Watkins?

A. Right.

Q. And Drew, correct?

A. That's correct.

Q. Let me just stop here for a minute. Moving away from what motivated you to indict him, it is -- in all fairness to you, Drew had not cooperated as far as you know?

A. As far as I know he did not cooperate.

Q. He was involved by his own admission?

A. That's correct.

Q. Watkins clearly had been the pilot?

A. That's correct.

Q. Just so we also understand it, Royals name was not involved -- nobody had any evidence against Royals as you pointed out before?

A. At that point, that's correct.

Q. Is that correct?

A. That's right.

Q. You went ahead, everybody else had been taken care of in the federal court?

A. That's correct.

Q. No problem with that. The state, if we understand correctly, while there is dual jurisdiction you could indict the same person on the state level, even after he's been convicted in the federal level, you don't normally do it. You don't indict and sentence in the federal level for this crime,

A. Mr. Fawer, that could have been the fact. He came by the office a number of times, what I'm trying to say. There is a number of times in that book, I think he's been by a number of times where it's not in the book.

Q. Let me ask you a question.

A. All right.

Q. You knew he was going back to the coast that night?

A. Yes, sir, I know that.

Q. Do you know him often to come running up from Biloxi to see you, without having, without staying in Biloxi, or without -- excuse me, without staying in Hattiesburg to hold court or going on to Jackson or Vicksburg or Meridian? Have you ever known him to do that?

A. This would be very unusual.

Q. Okay. I guess what you're saying, that would be very unusual, it would be unlikely it would have occurred here?

A. Correct.

Q. Okay. Now, you date all this -- you got a date you put on this, right?

A. Right.

Q. May 14th?

A. Right.

Q. Even say it's May 14th, I think when you first testified in the grand jury, the turkey season stuck in your mind, that's how you fixed it in the spring, right?

A. That is correct. That's correct.

Q. You had no idea whether it was 1982 or 1983?

A. If that was my testimony, that would be correct.

Q. The problem I have is I have to deal with what you said. I've looked at it, hopefully you have some vague recollection of what you said under oath?

A. Mr. Fawer, I think I've testified like what, four or five times.

Q. Three.

A. Okay. Three. I've been interviewed on numerous occasions down there, and I'm just not in a position to sit right here and answer what I said this time, that time or another time. I can tell you generally, and you can refresh my memory.

Q. What we'll do is this. If I question you about a given proceeding and you don't remember, you ask me for the transcript.

A. Okay.

Q. And I will hand it to you.

A. All right.

Q. Every one of them is here.

A. All right.

Q. I have looked at them, take my word for that.

A. Okay.

Q. Okay?

A. All right.

Q. What is unacceptable is I don't remember, because we can always find out?

A. All right, get the transcript, very good.

Q. Do you want to see that on February 21st, when asked when this happened, you said spring of 1982 or spring of 83, had to be spring because it was in turkey season?

A. That's correct.

Q. Didn't know which year, right?

A. At that time, no, sir.

Q. At some point thereafter, you decide it was May 14th 82, right?

A. That's right. I'm sure, I went back and asked my secretary to look up a specific date, and she did.

Q. Oh. The specific date?

A. That's right, without, excuse me. If she could determine when it was Carroll and the judge came by the office.

Q. Is that the only date were are there together?

A. No, could have been a different date than that. Let me say this. I've given what I think is the date. It could have been a different date.

Q. I want to deal with it. See, you're on record, it has a bearing for my purposes, okay. Let's stay with it, okay?

A. All right.

Q. Do I understand what you're telling me right now, are you saying it was May 14th, 1982 or you really don't know?

A. My best recollection, my best opinion is it was on that date. It could have been a different date.

Q. Could have been. Could have been a difference year?

A. Well, it was before it was passed to the file, I know that.

Q. Now we're coming to it. In order for it to have been before it was passed to the files, it had to be in 82, according to you?

A. All right, sir.

Q. Am I right?

A. Passed to the file in --

Q. December of 82?

A. 82.

Q. Before, in February of 1984, you're never mentioning, you never link the passing to the files with the conversation -- beg pardon. Before December 21, 1985, when you go to the grand jury and use the phrase 82 or 83, you are never attributing to that conversation anything about passing it to the files, am I right?

A. Probably wasn't trying to tie it down.

Q. Shall we go to the grand jury?

A. Sure.

Q. Do you want to see it?

A. Certainly.

Q. Okay. You agree February 21st is the first time you mention the telephone call? You were there in July, no mention

Q. One full --

A. It could have been a different date than that, that's my best recollection, it's that.

Q. Jury understands, some one got married on May 15th, right?

A. Right.

Q. In Jackson?

A. That's correct.

Q. That date happened a day after your girl friend had a fight in a bar, am I right?

A. That's right.

Q. Okay. Now unless there is some way of tying those two events to the judge visiting you, at the farm, they have no meaning, right?

A. Of course the judge went with me to Bonnie and Clyde's that night.

Q. Oh, really?

A. Yes, sir.

Q. Where did you testify about that?

A. I don't know that I have.

Q. Oh, another one. The judge went with you to Bonnie and Clyde's?

A. He left my farm, we went by Bonnie and Clyde's, I drove him from Bonnie and Clyde's down to his car and he went back to Pascagoula.

Q. Let's just understand something.

day before, yes, sir.

Q. Therefore, since that's the day I think it was and since it's blank, I guess it's the wrong date in the book?

A. Could have been --

Q. Is my logic --

A. That's right. It was in there and it looks, happened to be on the wrong side of the page, there's nothing on the 14th. I know that we were in the office that day, so it's logical it was on that day.

Q. I take it --

A. It could have been another day. That was the day I made no notation --

Q. Is there a question pending?

A. Pardon?

Q. Is there a question pending?

A. No, not that I know of.

Q. Wait for one. Thank you.

I take it you're aware, are you not, there were other days that you indicated that days on which Mr. Ingram and Mr. Nixon may have been at your office?

A. That's correct.

Q. By the way, even on this notation, when you see two notations in a row, on this book, am I correct, there are many times you have, I see three in a row on the eleventh. Right?

A. Where are you?

Q. I'm showing you the 13th but that's the day there was jury selection, but you can look through it and find it yourself.

A. Right.

Q. But then we come to May 14. See that day?

Q. Then we come to the May 14th, see that date.

A. Okay.

Q. Motions, before whom?

A. Judge Walter Nixon.

Q. Judge who?

A. Judge Walter L. Nixon.

Q. Motions, before Judge Nixon, motions before Judge Nixon, motions before Judge Nixon. Motions, before Judge Nixon, in fact a listing of all the motions to be heard that day before Judge Nixon, eleven in number?

A. All right.

Q. That doesn't mean he couldn't have, of course. You'll accept the fact these records reflect he was in Biloxi on May 14th?

A. He's a very, very hard working man. If you say he's down there, that's what the record reflects.

Q. You would agree therefore it would be unlikely, you've never heard of him going to Biloxi to Hattiesburg and going back in the same day, he would have done that on a day he was in Biloxi that day?

A. Very, very unlikely.

Q. He can't be in two places at the same time, right?

A. I would agree with that.

Q. As hard working as he is, couldn't be there, right?

A. I'll agree with that.

Q. Okay. So we got some problems with the May 14th date?

A. Might not have been May 14th.

Q. Maybe a good day, except wrong year.

A. No, sir, it wouldn't be the wrong year, it was the day before Gary Turner --

Q. Okay, stay with it, without -- if it's not 1982, then your story is a fabrication?

A. It's not a fabrication.

Q. I hear you. But we know for a fact, at least we're fairly confident, didn't happen on May 14, 1982.

A. No, sir, I'm not.

Q. You're not confident?

A. No.

Q. You need more evidence than that?

A. No, you showed me a document where we had motions, he and Judge Roper. I don't know what time he left, what time he got through, who he left them with. I'm not trying to say, if Judge Nixon says he wasn't here, I'll take his word, he wasn't here.

Q. Anything you want. From what I understand, your thesis would have to be, if we can physically place him in Biloxi -- how long does it take, two hours, hour and a half?

A. Hour and a half.

Q. We have to have him leaving this morning full of hearings, running up to Hattiesburg to see Wiley Fairchild, calling you,

A. Because that was what I remember.

Q. And that was about three hours ago. Right?

A. Right.

Q. And that doesn't seem to be your recollection three hours later?

A. If it's important,.

Q. Everything's important that you say on that witness stand.

A. All right, sir.

Q. At least to this man, it is.

A. Sure.

Q. So what you're telling us now he didn't differ from you there, he told you that he had been there in the car. Right?

A. Told me the only, what I can say is he had been to Wiley's and Wiley mentioned it to him.

Q. Okay. And that Wiley had asked me, didn't want to do anything, didn't want to embarrass you, didn't want to do all these things?

A. That's true.

Q. But Wiley wanted him to put in a good word with you. Right?

A. That's right.

Q. Let's stop there a minute. You read Wiley's testimony. Right?

A. Just now, right.

Q. You read it before. You said just now this isn't the first

going to help your boy?
A. Right.
Q. Right?
A. That's correct.
Q. Now we have a conversation, ostensibly between a man who's had some drinks and Wiley. By the way have you ever heard or ever read of Wiley testifying anyplace to any of the rest of this conversation that you now put in it?
MR. WEINGARTEN: We respectfully object.
THE WITNESS:
A. I don't recall.
BY MR. FAWER:
Q. What?
A. I don't remember reading it, no.
Q. Tell us the rest of it. Let me hear the dialogue that's coming from the Judge in this phone call. Explain it.
A. You want it?
Q. Sure.
A. Okay. The Judge told him, he said, Mr. Fairchild, this is Walter. I just want to tell you that the man we were talking about today, I'm out at his farm, talked with him, and he tells me that everything is going to be all right with your boy. That your boy is not going to go, I believe his words to this, this is the essence of it now, I didn't write it down, I don't have a transcript of what was said, I'll tell you what my best

recollection of what was said.

Q. I just want you to understand something, --

A. Okay.

Q. -- from this point forward, it's new. It wasn't said earlier today and it wasn't said by you in July.

A. Okay.

Q. But feel free to add anything you want.

A. No, I don't need to.

Q. Go ahead. You had some more you were coming up with. Come on.

A. That was it. And I asked him --

Q. Something about the boy, you started to add something. Let me hear it. Go on.

A. Let's rehear it.

Q. I'm sorry to interrupt. You're better with the free flow. What was the next sentence supposed to have come from Judge Nixon?

A. The Judge told him he had a conversation with me.

Q. Go ahead.

A. Okay. And that he had told me everything was going to be all right.

Q. You said that. Go on. Try to move beyond that.

A. That was the sum and substance of that.

Q. What about the children? Come on.

A. Okay. He thanked him for allowing him to make these investments with him.

Q. Go ahead.

A. That he appreciated the opportunity.

Q. Go ahead.

A. That he enjoyed the association with him.

Q. Go ahead.

A. And that he was having a hard time or that it's kind of hard getting by.

Q. Go ahead.

A. On the limited income that he had with the expenses that he had and he appreciated it.

Q. This is all said in that phone conversation?

A. Yes, sir, that was basically the way the concept went.

Q. You already told us you never saw why Wiley ever said that was said in that phone call?

A. I have no idea what Wiley said.

Q. Now you did however -- In Wiley's testimony read where Wiley had met Judge Nixon back in 1982. Correct?

A. (No response.)

Q. At the time of the mineral investment -- Do you remember that? You read his testimony about it.

A. Okay.

Q. And the things you are saying are the things that Wiley described as having been said in connection with the mineral investment. Correct?

A. Correct.

Q. But you now have Wiley, you now say that the Judge in this conversation, you have conveniently added all this into that conversation as well. Right?

A. No, sir, I added what I remember.

Q. Just remembered it for the first time in June of 1985. Right?

A. No, sir, I remember it all the way through.

Q. First time you ever said it before the Grand Jury?

A. Before the Grand Jury.

Q. Right after, shortly after you had been reading Wiley's Grand Jury testimony?

A. Had nothing to do with it.

Q. Had you just read within the last months testimony?

A. I'm sure that would have been true.

Q. Had you between the time of his testimony cut your deal with the government?

A. No, sir.

Q. I beg your pardon, between the reading of the testimony on June 28th?

A. Sure I had, it's the date, right.

Q. You had cut your deal?

A. Right.

Q. Reduced your exposure from twenty-five years to one year?

A. Well, that would be obvious, yes.

Q. Obvious. Let's make --

A. That's the maximum, yes. True.

Q. And then you got on the phone, correct?

A. Right.

Q. And what was it that you had to say?

A. Told him, I said, told Mr. Fairchild that I hoped he didn't think anything was personal about his boy, and told him that Judge Nixon had mentioned the situation to me and that I would see to it. I believe I told him I was going to pass it to the files.

Q. You just believe that you said that this time?

A. Yes, sir, what I told him. I told him I was going to pass do anything to the son, right?

A. That's correct.

Q. It was a sweet deal, there was nothing in fact, do I understand, regardless of when this took place, the judge asked you not to do -- wasn't a single thing he asked you to do?

A. He did not verbally ask me to do anything affirmatively for Drew Fairchild or for Wiley Fairchild. He merely said he wanted to put in a good word, merely asking of it, that caused enough influence on me to go ahead and do what I did. I was trying to make him look like a hero.

Q. I asked you a simple question, I got a lecture from you.

MR. WEINGARTEN: We object to that.

MR. FAWER: I did.

MR. WEINGARTEN: You don't have to lecture this witness. You can ask him questions and he can answer them.

MR. FAWER: That's what I'm trying to do.

MR. WEINGARTEN: Well don't lecture.

MR. FAWER: Do you have a robe on today?

MR. WEINGARTEN: I object.

MR. FAWER: That's different. I suggest it's a perfectly proper question.

THE COURT: It what?

MR. FAWER: That, I will withdraw it and ask the next one.

MR. WEINGARTEN: Your Honor, Mr. Fawer doesn't need to give lectures.

MR. FAWER: You want to make one, Reid?

MR. WEINGARTEN: I want to make an objection, I think I have every right to do it, and I've just made one.

THE COURT: Well, I admit Mr. Weingarten is right.

MR. FAWER: I withdraw the question.

THE COURT: Wait a minute. I've let you lecture to the jury, do everything under the shining son.

MR. FAWER: Lecture the jury?

THE COURT: Yes.

MR. FAWER: That's in opening.

THE COURT: Except ask your question. We're getting closer to the end of this trial, and otherwise I'd start cutting you short as possible. Now, let's go ahead and get through with this witness, and ask direct questions, and move on to the next question.

MR. FAWER: With all due respect, just what difficulty -- what I was complaing about was getting a non-responsive answer. That's what began this.

THE COURT: Move along.

BY MR. FAWER:

Q. Okay. Sir, at no time, am I correct, did Judge Nixon ever ask you to do a single thing for Drew Fairchild, right?

A. To the contrary, he told me --

Q. No, sir.

MR. FAWER: You see the problem I'm having. I have --

MR. WEINGARTEN: He's entitled to answer it.

MR. FAWER: As soon as I'm finished speaking, you can. I'm simply doing just what you asked me to do, ask a question, answerable by a yes or no. Instead there is a lecture coming. All I would like, some guidance from the Court to the witness to just answer.

MR. WEINGARTEN: Your Honor, the witness is not obligated to answer Mr. Fawer's questions yes or no. He may answer them as he sees fit.

MR. FAWER: So long as it's responsive.

THE COURT: Let him answer in his way. If you don't like the answer, then you can ask it another way.

MR. FAWER: That's what I was doing, Judge.

THE COURT: All right.

BY MR. FAWER:

Q. Is it not a fact, let me say this, this calls for a yes or no answer, okay. Is it not a fact that at no time did Judge Nixon ever ask you to do anything for Drew Fairchild, is that true?

A. That is verbally correct.

Q. Okay.

A. May I explain.

Q. Can you explain it?

A. Explain my answer.

Q. You want to tell us what you understood to be said?

A. Right.

Q. I'm going to come to that, okay. Did he ever ask you to do anything for Wiley Fairchild?

A. Did not.

Q. Okay. Now, is it true that you then pressed him, according to you, what do you want me to do? Would you like me to pass to it the files, and the more he said no, the more you said I'm DA, I can do what I want. That's your testimony?

A. That's correct.

Q. Am I right?

A. That's correct.

Q. Are you telling us that with when he said I don't want you to do anything, you took that to mean, I want you to do something?

A. Well -- may I explain it to you?

Q. I just asked you, didn't I? Go ahead.

A. You want a yes or no?

Q. Anyway you want, whatever, you are comfortable with the long answers, go ahead.

A. Mr. Fairchild said he wanted to put in a good word. Assume by that that what the judge was doing was trying to ingratiate himself to Wiley by bringing the message to me. Then he asked me to not to do anything that would be embarrassing, against my oath of office.

Q. According to you, not to him, but to you, he keeps saying, I don't want you to do anything, I don't want you to do anything. You're the one who keeps interpreting this saying, he wants me to do something, he wants me to do something, right?

A. Right.

Q. Then what you turn around, according to your testimony and do, is an absolutely meaningless act, pass the case, I'll pass the case to the files, right?

A. Obviously it wasn't meaningful.

Q. What I'm saying, what you're telling us you agreed, because you want to do what he says, you then do something absolutely meaningless. You agree to do something meaningless?

A. Not meaningless to pass something to the files, no.

Q. You told us what it means is, it's off in limbo, can be brought back any time?

A. Could be. And it was.

Q. This is in May you're telling us, according to you it's May of 82, correct?

A. That's correct.

Q. Here you are, when this man talks you listen, right?

A. That's right.

Q. I think there is some sort of motto, some sort of ad that says when Hutton speaks, but with him, he says, you jump, right?

A. We're friends.

Q. Not just friends, man if he, you call Wiley back and say I want the judge to get credit for this, I'm going to pass it to the files, when this man talks I listen, right?

A. Words to that effect.

Q. You hang up the phone?

A. I assume.

Q. Hang it up, give it -- the phone gets hung up, right?

A. Right.

Q. You have a few drinks, wherever you go, you go to Bonnie and Clyde's, whether or not he goes, that's the end of the scene, right?

A. Right.

Q. It's May 14th, it's dark out, you're going to see a fight that night between two ladies and go to a wedding the next day, right?

A. Right.

Q. Come back to the office, made yourself a promise to a federal judge, right?

A. Right.

Q. May goes on, and do you pass it to the files?

A. No.

Q. June comes on, do you pass it to the file?

A. No.

Q. July, do you pass it to the file?

A. No.

Q. August?

A. No.

Q. I mean, you made a commitment, you're telling this jury you made a commitment in May, then sometime in December you pass it to the files to fill the commitment made in May, that's your testimony?

A. That's correct.

Q. Okay. And that you pass it to the files, which means it's going to normally be dead, right?

A. That's right.

Q. Then you run into court thirty-three days later, say I want it back, right?

A. Right.

Q. Does it dawn on you, my God, how am I going to explain this to the judge. He made a promise, you're making promises, and aren't you going to be putting him in an embarrassing situation. You told him you were passing it to the file, right? That was the promise you made him?

A. I didn't promise Judge Nixon I was going to pass to it the file. I promised Wiley Fairchild I was.

Q. That's who was in the middle of it, Judge Nixon, according to you?

A. I wanted to give him credit.

Q. You wanted to give him credit?

Q. Yet it's your testimony all of this took place back in May, long before of this publicity?

A. That's correct.

Q. I see. Let's talk a little bit more -- let me just understand something. Did you, aside from telling the Judge that you had a plea agreement that you were -- you told the Judge you had a plea agreement with Drew?

A. Oh, with Drew, yes, sir.

Q. Okay?

A. Right.

Q. I'm sorry. You thought for a minute I meant your own plea agreement?

A. Right.

Q. That was well-publicized, yours, wasn't it?

A. Right, it was.

Q. In any event you told the Judge that there had been a plea agreement, right, you were living up to it?

A. I'm sure I did. That's right.

Q. But beyond that, was there any discussion of the case whatsoever, the Drew Fairchild case?

A. No, I never went, no, sir.

Q. Just listen to my question. At no time, isn't it a fact at no time, including that evening, whenever it was, you never discussed the case with the Judge?

A. That's correct.

Q. You know -- Were you aware of the fact that he not only called you after the interview by the prosecutor and the FBI -- You know who Owen Kennedy is?

A. Who?

Q. Mr. Kennedy of the FBI?

A. No.

Q. You know George Phillips?

A. I know George Phillips.

Q. You know Carroll Ingram?

A. I know Carroll Ingram.

Q. Are you aware he called them as well as you?

A. I knew he called Carroll.

Q. You knew he called Carroll?

A. I might have been told he called George. I don't know.

Q. You knew he called George?

A. I do not.

Q. He was incensed about the accusations that had been put on him?

A. Highly incensed.

Q. Excuse me?

A. Highly incensed.

Q. Highly incensed. I'm sorry I didn't understand it. He was basically explaining to you that they were in some way investigating the mineral investment that he was in with Wiley?

A. That's right.

Q. So something about the Drew Fairchild case?

A. That's right.

Q. He was furious, couldn't understand what the accusation was?

A. That's true.

Q. Because they weren't being clear about it?

A. That's right.

Q. He was trying to find out from you if you knew anything about it. Correct?

A. That's correct.

Q. As far as you know, he did the same thing with Carroll Ingram?

A. As far as I know, yes.

Q. Okay. And he told you again, he told you, at that time that what he had told them, he had nothing to do with the handling of that case?

A. That's true.

Q. Hadn't spoken to anyone about the case?

A. That's true.

Q. Had no involvement in that case. Right?

A. That's true.

Q. Now as I understand it, you took that to mean that he wanted you to hide this phone conversation?

A. I did.

Q. You never mentioned -- There was no discussion of the phone conversation. Correct?

A. Of course not. He did not --

Q. According to you he said that he had had nothing to do with the handling of the case?

A. That's correct.

Q. And had never talked to anyone about it. Correct?

A. That's correct.

Q. You read that to mean, I mean did you say to him, well, what about the phone call? You didn't say that to him?

A. Did not.

Q. Nothing of that sort?

A. No.

Q. You told us -- Who was about to speak to Carroll himself?

A. That he was.

Q. You told me he spoke to Carroll that same night he spoke to you?

A. I don't know when he spoke to Carroll. It was my understanding he talked to Carroll about the interview.

Q. Either that night or the next day, right about the same time?

A. Right.

Q. It's your testimony he asked you to question Carroll as to whether the call was taped?

A. A couple of days later, yes, sir. I don't think he asked me --

Q. Not in that call?

A. No, sir.

Q. Pardon me?

A. No, sir.

THE COURT: Gentlemen, let's take a short recess.

MR. FAWER: Thank you.

(Recess.)

MR. FAWER: Your Honor, while we're just waiting for Mr. Holmes to take the witness chair again, just can we mark the excerpt of the telephone call of which we had a call between Mr. Holmes and Mr. McMullan, the government and I have agreed, we have an excerpt. I'm not going to play it right now. I want to introduce it as Defendant's Exhibit 32. This is the original excerpt, we may end up with a copy using a tape. The government and I will work out an agreement on that.

THE COURT: Okay.

(Exhibit D-32 marked.)

BY MR. FAWER:

Q. Mr. Holmes, what we were talking about is apparently you say that your recollection now is in this conversation the judge did not mention the taping, that this happened according to you, he asked you to find out from Carroll about whether the call was taped?

A. That's correct.

Q. Carroll was not party to the phone call, right?

A. No, sir.

Q. I'm talking about the call to Wiley Fairchild?

A. No, sir.

Q. And as you now told us, the judge talked directly to Carroll?

A. As far as I know. I wasn't party to that one he did.

Q. I understand that. We're now in April of 1984?

A. Okay, right.

Q. Okay. What you're saying, he asked, he asked you to do something, to talk to Carroll Ingram about a certain subject, and you now know he talked to Carroll Ingram. As far as you know, was that subject ever discussed between them?

A. If it was I have no knowledge of it.

Q. Okay. Did this taping thing you talk about, this conversation take place in that call to you the evening, when he first called you?

A. No, sir, was not, that I recall.

Q. So your recollection now is there was two times you spoke to him?

A. Right.

Q. In your grand jury that's not what you said, you know?

A. Yeah, it was.

Q. Let me show it to you.

A. Okay.

Q. "Question: Did Judge Nixon say anything else during that conversation that you recall?

"Answer: He asked me if I knew whether or not the telephone call that was made from my farm was taped, and if I knew it."

A. May I see it?. Okay. "Question: Is it your recollection the telephone conversation or face to face meeting or do you know for sure?

"Answer: Subsequently I went down there, rack my brain whether it was, with you, but I was down there. The same conversation, just related took place face to face.

Q. The same conversation?

A. Same conversation.

Q. Sir. You and I are agreeing. Don't get excited.

A. You trying to make me out a liar.

Q. I don't mean to make you out a liar.

MR. WEINGARTEN: I ask for an instruction for Mr. Fawer not to make comments. There is no place in this courtroom.

MR. FAWER: May I proceed, Your Honor?

THE COURT: Proceed. But limit your --

MR. FAWER: Editorial comments --

THE COURT: To zero.

MR. FAWER: Done.

BY MR. FAWER:

Q. Mr. Holmes, you said, as I understand it, look a little more carefully, that you had the same conversation, am I correct, face to face?

A. That's correct.

Q. So you're telling us what was said in the telephone conversation was repeated face to face, is that not what you're saying?

A. That's correct.

Q. That's what I'm referring to.

A. Yes. Which I knew nothing about.

Q. I know you knew nothing about it.

A. Right.

Q. Sometime in January, you had occasion to be talking to Carroll about his visits to Washington to talk to the prosecutors, right?

A. If it was January, it was sometime -- whenever it was.

Q. May have been a little later, maybe February. Maybe February 14th?

A. Whenever it was. Sometime prior to the next grand jury, whenever it was.

Q. You recall going to see Carroll and him telling you that he had told the FBI or the government about the telephone call?

A. That's correct.

Q. And when you heard that, you said you've just got me indicted for perjury?

A. Carroll Ingram told me he had told the people in Washington that, about the phone call and about Judge Nixon's involvement in it, he said, I'm happy to report they told me they weren't going to indict him, talking about Carroll, weren't going to indictment Judge Nixon, weren't going to indict me, what he told me. He said, they said the fact Judge Nixon asked you to do something, since it was not in the federal system, that Judge Nixon had a legal right to ask you to do a favor for

A. No sirree. That isn't what I said.

Q. At Page 41 of your grand jury testimony of February 25th, six days later, you described the conversation in the car. Did you not say at that time that he, when you said this to him, he said, Bud, I don't know why you called Wiley, you have telephonitis, like you always do?

A. Do you have my --

Q. Excuse me. Let me show you, look at two pages. You can look at Page 41 and again at 53 and 54?

A. Get me my last grand jury testimony.

Q. We don't come to that yet. We're talking about six days later?

A. That's when I was still trying to cover up, that's exactly right.

Q. Didn't he tell you -- when he met you at that time, didn't he use the phrase that you had telephonitis in making that call?

A. Did not.

Q. He didn't?

A. Did not.

Q. That was Peterson, he didn't say that until Peterson?

A. Did not.

Q. Is that right?

A. No, sir.

Q. Did he say it at Peterson's?

A. No, sir.

Q. How come you testified to that, that way when you went to the grand jury in June?

A. I was trying to recount, soft peddle the thing after Carroll had told it to them, based upon that conversation, when I got indicted.

Q. Sir. You know what you're not doing now? Listening to my questions. I just referred to your June testimony.

A. What year was that testimony in?

Q. Well, I mean you don't even recall that?

A. Well, there's been so many of them, the way you're going, it's hard to keep up with you.

Q. Been so many of them, June of 85, if that makes -- if that helps you.

A. June of 85?

Q. Sure, right after your plea agreement. Could you have ever testified about the Sam Peterson, the meeting, the time when you ran into the judge at Sam Peterson's farewell party?

A. I testified about that.

Q. You couldn't have testified about that any time except June, right?

A. Right.

Q. You testified there, when you talked to the judge he mentioned about, again about the telephonitis?

A. Do you have my testimony there?

you, when did he say it, and you describe the conversation as having taken place just the week before. Why don't you just look at this. Is there any other time you could have had this conversation about the telephonitis?

A. Telephonitis came from his attorney, Bill Goodman, who related that he doesn't know why I may have made the phone call, might have just got telephonitis, that's what I told the grand jury. Subsequent to that I got indicted for it.

Q. Okay. Let me just get the page reference.

A. I got indicted because I was trying to cover it up.

Q. You still got a question in front of you or do you want to add something?

A. I didn't know you ever quit.

Q. Excuse me?

A. Excuse me?

Q. I didn't hear you?

A. I said I didn't know you ever quit.

Q. Quit what?

A. Quit questioning.

Q. Can you tell me the question?

A. I'll be glad to cross-examine you if you want to change places.

Q. I've never had to make --

MR. WEINGARTEN: I object to this colloquy, Your Honor, irrelevant.

Q. Did he ask you?

A. No, sir. He asked, ought me to go find out about the tapes.

Q. That's what you said?

A. He asked me what he did, that's what I told you.

Q. My question again.

A. Okay.

Q. Just focus on what comes out of here. Did he ever ask you to go to anyone to ask them to testify a certain way before the Grand Jury?

A. Did not.

Q. Did he ever ask you to find out what someone testified about before the Grand Jury?

A. Did not.

Q. Did he ever ask you to find out or to tailor your testimony in any way when you went back to the Grand Jury these four times?

A. (No response.)

Q. Did he ever make such a request of you?

A. No, sir. He never did come out that way. I interpreted that that was the way he wanted it to go.

Q. That came off, when you met -- Excuse me, he called you, as you told us, in a rage -- I said rage, very angry, highly incensed on April 18 and said I had nothing to do with it, I don't understand what they're talking about, I had nothing to do with any wrongdoing concerning the Drew Fairchild case. You took that to mean you should go lie to a Grand Jury. Is that your interpretation?

A. Well, it wasn't the Grand Jury empaneled.

Q. That means you took that to mean go lie to the FBI, go lie to the Department of Justice, go lie every single time you're called to the Grand Jury?

A. Mr. Fawer, when the man asked me to go find out about the tapes and when he told me, repeated the statement I've never talked to anyone about this case at all, I've told them I haven't talked to anyone about the case, and when it came out in the paper what his statement was about I've never talked to anyone about the case, you know, that's what his press conference was, I had to go in and make him out a perjurer or I had to go along with what I had read he said, and I made the mistake of going along with his version.

Q. I see. You did this all because of friendship?

A. Yeah.

Q. A little bit like Jonathan and David in the Bible?

A. I haven't read Jonathan and David.

Q. You ought to read it. It's a good story. But that had nothing to do with you're talking to Carroll Ingram about his potential Grand Jury testimony, correct, in February?

A. Well, I know good and well that Carroll talked with him, that he would be telling him about the conversation and everything that he had with the Judge.

Q. Oh, you were protecting the Judge?

A. Yes, sir.

Q. It wasn't you, it wasn't you who was being made out as a perjurer, it was the Judge you were worried about?

A. To be frank, I was interested in myself, too.

Q. Oh. Just this much interested in your own welfare?

A. Well, I never have put the inch marker to it.

Q. Well, it's not, it's really your interest, your interest is really down there, it's the welfare of your constituents that's really high in your mind. Right?

MR. FAWER: I'm going to object to relevancy.

MR. FAWER: I'll withdraw.

BY MR. FAWER:

Q. I mean that's the reason you said the other items that he read off when we started your interrogation, the other charges of perjury, the ones you conceded had to do with you and you alone and nothing to do with the Judge? Those are just errors you made before the Grand Jury, failures of recollection?

A. No, sir.

Q. Relating to yourself. Right?

A. No, sir. I was to, the failure of recollection was I was trying to cover up about the phone call.

Q. But when you went to see -- But you got indicted for four other items. Right?

A. Right.

Q. You pled guilty to tailoring your testimony?

A. That's not what I pled --

Q. Excuse me?

A. Contempt of court.

Q. Tailoring your testimony?

A. I think it's in there. You read it three times.

Q. It doesn't seem you remember it. Let's go on. We are almost done. The Peterson meeting, you told him you wanted to talk about the call?

A. Right.

Q. Right?

A. That's correct. Right.

Q. As I understand it, he's not taking any position that he -- He didn't deny the existence of the call, he's talking to you about telephonitis, right?

A. No, sir. First time I talked to him down in the car. I don't know what you're talking about in the telephone call --

Q. We are at the Peterson meeting. Did you hear me say Peterson?

A. He was always taking the position there wasn't a phone call. I said he's always denying the telephone call.

Q. So we can end this on some rational note, at the Peterson party, at the Broadmore, right?

A. No, sir, it was the Sun-Kist, I believe.

Q. Excuse me?

A. Sun-Kist, I believe.

Q. Spring, 85, right?

A. Whatever date.

Q. A few drinks in you, you go seek out the Judge. Right?

A. Right.

Q. You haven't spoken to him since you saw him in the parking lot. Right?

A. I believe that's correct.

Q. You have a conversation you initiate, I want to talk about the telephone call?

A. We need to get together to discuss the telephone call.

Q. You need to get together. Right?

A. Well, I was getting ready to go on trial. I knew it was one of the things I was indicted on, I knew he was going to have to be a witness.

Q. You went and approached him and said we have to get together?

A. Right.

Q. Did he deny at that time the phone call?

A. He said, no, sir, I don't know why you made the phone call to Wiley.

Q. You're talking about -- He does not deny the existence of the call. Correct?

A. No, sir.

Q. He tells you about the telephonitis again, what he told you before?

A. I don't recall that, no, sir.

Q. Let's look at your Grand Jury.

A. Okay.

Q. Now so we'll -- Here. It was at the Broadwater?

A. Okay. Sam's in the courtroom. Go over and ask him where it was. I don't remember.

Q. It's your testimony.

A. All right.

Q. We are having a retirement party at the Broadwater at the Gulf Coast. I went down there to Sam's retirement party?

A. Right.

Q. I saw him and went over to talk to Judge Nixon, had a couple of drinks and told him -- I had been to another place and I went over to talk.

A. Yeah.

Q. I need to get together and talk with you about this dog-gone telephone call. Right?

A. That's correct.

Q. I felt like I had ridden that horse about as far as I needed to ride it?

A. That's correct.

Q. By the way, this is before you entered the plea?

A. That's April, I believe.

Q. I'm talking about the meeting taking place?

A. That's right.

Q. Your testimony is taking place after, the meeting is before?

A. Right.

Q. At the Broadwater?

A. Right.

Q. He looked up and said, well, I don't know why you called Wiley. You picked up the phone and called him and started assuring him the agreement you had with him was going to be honored. You just picked up the phone and called him. Is that correct?

A. That's correct. Where is the telephonitis in there?

Q. I was just looking for that. I was looking for my notes.

A. I wish we would --

Q. I thought we just read about the telephonitis?

A. No, you said it was in there. It's not.

MR. WEINGARTEN: Objection. This is mere argument.

MR. FAWER: I did not argue with him. It does not say telpnonitis. I just thought --

THE WITNESS: He kept telling me it was in there and I asked him to show it to me. It wasn't in there.

MR. WEINGARTEN: I request that you instruct counsel to pose questions and simply do it.

MR. FAWER: I don't know the objection, Judge. He was -- I was reading something to him. MR. WEINGARTEN: This is obviously improper, Your Honor.

THE COURT: Let's move on.

MR. FAWER: Thank you, Your Honor.

BY MR. FAWER:

Q. So I understand once and for all, when is it the telephonitis conversation did take place?

A. Judge Nixon never told me telephonitis. Bill Goodman relayed to Jim Dukes that the Judge did recall a telephone conversation out at the farm and he did not know why I made the phone call, you know, Bud just got telephonitis.

Q. I see.

A. I assume that was going to be Judge Nixon's position. That's what I told the Grand Jury.

Q. I see. That was a conversation when?

A. In the Grand Jury I got indicted on.

Q. You mean in February?

A. Yes, sir.

Q. Do I understand correctly in February, though, you did say that to the Grand Jury?

A. That's right.

Q. That's what he had told you, that he had, he told you that you had telephonitis?

A. That's what you read. It's in the Grand Jury. That's what I testified to.

Q. When you went back to the grand jury, that what you did, Mr. Holmes?

A. Yes, I did.

Q. When you went in immediately after hearing the word telephonitis, what did you do when you next went in the grand jury?

A. When I went in the grand jury, I tried to do my best to soft peddle it, mention the telephone call, hoping I could slide through on the thing by trying to soft peddle it.

Q. Did you slide through?

A. Question was asked to me that, did I have a chance to talk to Judge Nixon, Judge Nixon said I had telephonitis.

Q. Is that true?

A. He didn't tell me that, no.

Q. Did you slide through?

A. I got indicted.

Q. That precisely the reason you got indicted?

A. Exactly, I got indicted over the telephone call, which you all told me if I would come into the grand jury at the very beginning, told you all about the telephone call, I never would have been indicted.

Q. Is that what you pled guilty to?

A. I did. That's the only thing. Well, I believe tayloring, the only thing I felt guilty at all was covering up the telephone call.

# EXCERPTED WITNESS TESTIMONY

## SKIP JARVIS

yourself?

A. With only three of us there, normally I would be directly involved. Or if I had someone else do it they would be doing it under my direction.

Q. Who in the office had the responsibility for maintaining records of such transactions?

A. The ultimate responsibility rested on me.

Q. Directing your attention to February of 1981, did you have occasion to prepare some royalty deeds for Wiley Fairchild?

A. Yes, I did.

Q. How did you come to do that?

A. I was in my office on February 25, 1981 and received a telephone call on the intercom from Mr. Fairchild to go to his office. I went to his office. He instructed me to draw up some conveyances.

Q. Were you given any particular instructions?

A. Yes, I was. I was given --

MR. FAWER: May we just approach the bench for one moment?

THE COURT: Yes.

(At the bench:)

MR. FAWER: Judge, I just want to understand, in the interest of expediting it, I'm not going to object to some of the hearsay that they're going to elicit, which is obviously what she's doing right now, because he's testifying to what

Wiley Fairchild stated to him. But I just want it understood, I'm not waiving my right to make objections to the hearsay, to other crimes that might have occured. He's being asked what a third party said to him, which is classical hearsay. It is not, you can say it's not being offered for the truth of it, but that's all it is.

MS. LITTLE: Wiley Fairchild gave instructions to Mr. Jarvis to prepare these deeds. That's not hearsay. It's a command.

MR. FAWER: It's a command? It's not offered for the truth; there is no truth to it.

THE COURT: You're not going to object to it?

MR. FAWER: I just want Your Honor, I'm allowing that to happen, I expect there will be times when it becomes more crucial in terms of the inadmissibility, I will make an objection. I don't want it held against me that I'm waiving it.

THE COURT: Well, you're not waiving anything. Let's go on.

MR. FAWER: Thank you.

(Open court:)

BY MS. LITTLE:

Q. Mr. Jarvis, did Mr. Fairchild give you any instructions?

A. Yes, he did.

Q. What were the instructions?

A. My instructions were to draw up three blank overriding royalty conveyances and he said in the Covington County well, the Getty Marion County well and the well down in Mobile County.

Q. Mr. Jarvis, I'm going to show you what has been marked as Government's Exhibit 8, 9 and 10 and ask you to look at them.

(Delivers documents to witness.)

A. May I take them out of these covers?

Q. Sure. Let me ask you this question first. After you received these instructions what did you do?

A. Well, initially I had to ask for a clarification because I didn't understand what he was asking me to do.

Q. Did you ask for a clarification?

A. I did. The clarification I needed was he requested I draw up three blank conveyances. The conveyances themselves were always three fill in the blank forms and I didn't know if he wanted me to bring in three fill in the blank forms or whatever.

Q. Did he clarify that for you?

A. Yes. He didn't use the term grantee but he told me to leave blank to the person where it was going to and so I left the grantee blank when I gave them to him.

Q. What did you do after you did that?

A. I drew up the conveyances.

Q. Look at the documents and tell me if you know what they are.

A. Exhibit 8, I recognize; Exhibit 9, I recognize; Exhibit 10, I recognize.

Q. Let's start with Exhibit 8. What is it?

Q. After you got these signatures, what did you do with the deeds?

A. After the instruments were completed, witnessed and notarized, I took them upstairs to deliver them to Mr. Fairchild. However, Mr. Fairchild had left the building and I took these instruments and sealed them in a manila envelope because they were like at this point a blank check and I didn't want to leave them laying around. I put them in a sealed envelope and put them in big letters on the outside, overriding royalty deeds so he would know what was in the envelope and left them on Mr. Fairchild's desk.

Q. I'm going to show you now what has been marked as Government's Exhibit 11 for identification, ask you if you recognize it?

A. Yes. This is the manila envelope that it's sealed in, it has my writing on the front of it, where it says overriding royalty.

Q. Is that the envelope in which you put the deeds?

A. Yes it is.

MS. LITTLE: Move Government's Exhibit 11.

MR. FAWER: No objection.

THE COURT: Let it be received.

BY MS. LITTLE:

Q. What did you put the envelope?

A. I put it on Mr. Fairchild's desk, I wrote on here overriding royalty deeds so he would know that was what was contained in the envelope on his desk.

Q. Did you ever have occasion to see that envelope again?

A. Yes, ma'am, I did.

Q. When?

A. Approximately a week later.

Q. How did that come about?

A. In Mr. Fairchild's office there was a tray that he would place things in that he wanted me to handle, it was on a credenza behind his desk, I went in his office because I routinely checked this during the day because I checked the things during the the day he wanted me to handle and this envelope was in my tray.

Q. What was inside the envelope?

A. The original conveyances I prepared on the 25.

Q. Was the envelope in the same condition as it had been when you left it for Mr. Fairchild?

A. Not exactly. There was some additional writing when I left it on his desk.

Q. Where was the additional writing?

A. It was on the back side of the envelope.

Q. Hold the envelope up and indicate where the writing was?

A. I put my stuff on this side and the other was written on the back of the envelope.

Q. Looking at the writing in the top left-hand corner in blue ink, do you know whose handwriting that is?

A. Yes. This is Wiley Fairchild's writing. I dealt with him on a regular basis and I recognize the handwriting.

Q. What does it say?

A. Three Marion, three Covington, three Mobile -- the spelling is incorrect but I knew what he was putting on here.

Q. This is some writing in red ink is there not?

A. Yes, there is.

Q. Do you know of your own personal knowledge whose writing that is?

A. Of my own personal knowledge I do not know. I just assume from the signature on it the name.

Q. What name is on it?

A. It starts out with Wiley Fairchild's name and ends with the name Carroll Ingram.

Q. What does it say?

A. Wiley Fairchild, personal and then confidential is abbreviated, C-O-N-F, and then it has the name Carroll Ingram after that.

Q. What did you do with the envelope after you saw the envelope in Wiley Fairchild's office?

A. I didn't know what to do with it so I took it downstairs to my office and waited for Mr. Fairchild to come into the office to get a clarification as to what I was needed to do.

Q. Did you see him later in the day?

A. That means he signed them as grantor, as the person conveying the interest he signed them then.

Q. Did you obtain the other signatures for the documents?

A. Yes, I went ahead at that time and I signed as a witness -- I need to clarify something here. I did not go back to Sherry Burnett on this particular instrument, Sherry didn't go to work for us until January of 1981, so I went to Billy Riley because he worked there in 1980, and then I took them to Lynn Jones to be notarized and asked her to backdate the notary a year.

Q. Just to clarify, the date on all these deeds is what, the second set of deeds?

A. February 25, 1980.

Q. When were they actually prepared?

A. The first week of March, 1981, they were prepared about a week after the original set was prepared.

Q. After you collected the signatures on the second set of deeds, what did you do with the deeds?

A. I took them up to Mr. Fairchild and he instructed me to hand carry them to Carroll Ingram.

Q. Did you do that?

A. I went to Mr. Ingram's office with the instruments and he wasn't there so I just left them with the secretary.

Q. What did you do with the first set of deeds that you prepared that were dated 1981?

A. Okay. Because we had to keep track of who, what, when an

Q. Did there come a time when royalty checks were issued from the Fairchild Corporation to Judge Nixon?

A. Yes, ma'am.

Q. When was that?

A. That was early 1982.

Q. And to your knowledge did Judge Nixon ultimately pay some consideration for these royalty interests?

A. Yes. Yes.

Q. Do you know how much?

A. There were three promissory notes that I became aware of in early 1982.

Q. Do you know how much the notes totaled?

A. There were three notes, one was for $2,000, one was for 3,000 and another one for $4,500.

Q. When did you first become aware of an indebtedness by Judge Nixon to Wiley Fairchild?

A. 1982.

Q. I show you what's been marked as Government's Exhibit 15, 16, 17 and 18. Take a look at Exhibit 15. Do you recognize that?

A. Yes, I do.

Q. What is it?

A. It's a negotiable promissory note.

Q. In what amount?

A. Four thousand five hundred dollars.

Q. Who is listed as the person owing money on that note?

A. Walter L. Nixon, Jr.

Q. How about the next Exhibit, number 16?

A. 16 is also a negotiable promissory note in the sum of $3,000 signed by Walter L. Nixon, Jr.

Q. And Exhibit 17?

A. 17 is also a northbound able promissory note in the sum of $2,000 signed by Walter L. Nixon, Jr.

Q. Are these the notes that you have just referred to that you saw in 1982?

A. Yes.

MS. LITTLE: Move the admission of Government's Exhibit 15, 16, 17 and 18.

MR. FAWER: No objection.

THE COURT: Received.

(Exhibit No. C-15 marked).

(Exhibit No. C-16 marked).

(Exhibit No. G-17 marked).

(Exhibit No. G-18 marked).

BY MS. LITTLE:

Q. Had you ever seen these notes before July of 1982?

A. No, ma'am.

Q. Had you ever looked for any evidence of indebtedness by Judge Nixon for these particular wells?

A. Well, not particularly from Judge Nixon. I looked to see if we received any consideration of any nature. I looked through the receipts for the company W. R. Fairchild Construction Company and Windham and up until these notes appeared in 1982, I never found anything on the books to show any consideration.

Q. How were they brought to your attention?

A. They were brought to my attention by Billy Riley, the office manager.

Q. Did you ever discuss these notes with Mr. Fairchild?

A. Yes, I did.

Q. Why don't you relate that incident?

A. Well, we, Mr. Fairchild --

MR. SAUER: Excuse me. Could we have some idea of the date we are talking about?

BY MS. LITTLE:

Q. When was this?

A. Prior to my seeing these notes, I discussed this conveyance with Mr. Fairchild and then --

Q. Can you try to date that conversation?

A. That conversation took place late January, early February, 1982.

Q. And what happened?

A. I need to preface this by a conversation -- Well, let me clarify this a little bit. There was some concern among myself -

MR. SAUER: Excuse me. Your Honor, I'm not and I assume nobody else is, concerned about his state of mind. If he's got some testimony in response to a question, let him give it. He's an attorney, he ought to know the rules of evidence.

BY MS. LITTLE:

Q. Mr. Jarvis, why don't you relate the incident with Wiley Fairchild, specifically what you observed?

A. All right. I went to Mr. Fairchild's office to ask him whether or not he wanted us to have the oil companies pay the royalties directly to Judge Nixon or whether he wanted these payments to come through our books and be handled in-house.

Q. Was there any further discussion?

A. Yes, there was. He and I discussed as to what difference it made.

Q. And what did he say?

A. Well, basically, I remember my words very plainly, I just told him, Mr. Wiley, it's not my place to judge it right or wrong, but you're too obvious in what you have done.

Q. And what was his reaction to that state?

A. Well, he questioned what I meant and I said it appears this has something to do with Drew.

Q. What was his reaction to that?

A. He became extremely irritated and upset.

Q. Was it after that that you first saw the promissory notes?

A. About two or three days later, these notes appeared in the office.

conversations at that point. What does it have to do with the facts in issue to any conversations --

MS. LITTLE: Can we approach the bench?

MR. FAWER: -- as to what conversations he had between himself and federal authorities in 1983.

MS. LITTLE: May we approach the bench? AT SIDE BAR:)

MS. LITTLE: I have about four questions left. I'm simply going to establish that he reported the matter to the FBI in October of 1983, I'm not going into specifics.

MR. FAWER: Tell us the specific questions.

MS. LITTLE: Did you report the matter to the FBI; did you reveal your identity; did you later reveal your identity, and what was your relationship with the FBI.

MR. FAWER: If she wants to ask if he reported it to the FBI, that's fine, beyond that, she's just trying to soften the blow.

THE COURT: Overruled. (IN OPEN COURT:)

BY MS. LITTLE:

Q. Mr. Jarvis, I asked you if there came a time that you reported these matters that you just testified about to the authorities?

A. November 3, 1983.

Q. What exactly did you do to report the matter?

A. Initially I called the FBI office in Washington.

Q. Why a lie detector? What did it mean to you?

A. I have no idea.

Q. In any event, within a short period of time he fired you because you wouldn't take it?

A. Next day.

Q. This conversation as I understand it takes place at least a year and three months approximately after your conversation with him in which you suggest to him there was some wrongdoing in the transaction with Judge Nixon, right?

A. We had a conversation then and subsequent conversations concerning it.

Q. But my point to you, sir, is that in January of -- or February 82 is when you ostensibly had this conversation in which he became, what did you say, perturbed? What was your phrase?

A. I don't remember my exact --

Q. Tell us what he was?

A. He became upset.

Q. Okay. Called you, he called you crazy?

A. No, he did not.

Q. He told you there was nothing wrong with the transaction, right?

A. Not in those words.

Q. He told you when you suggested it had something to do with the Drew Fairchild matter, that to coin a phrase, you were nuts, it had nothing to do with it?

A. That is incorrect, sir.

Q. Tell the jury what he told you?

A. He told me he was too smart to get involved in something like that.

Q. He had spent too much time getting himself in fact I believe involved in a bribe, is that what he told you?

A. Not in those words, no.

Q. Was that the sum and substance of what he told you?

A. Not exactly.

Q. Sir, is it fair to say when you suggested some wrongdoing, he denied that there was any wrongdoing?

A. That is fair to say, yes.

Q. Fair to say, okay. So the criminality at that point is in your mind, right? You're the one who is suggesting the wrongdoing, right?

A. No, sir, my suggestion to him was that if in fact it did have to do with Drew that, he was too obvious in what he had done.

Q. You suggested to him that if it had something to do with Drew, it was too obvious, right?

A. That's correct.

Q. You were suggesting, were you not, that if it had something to do with Drew, it was criminal, and he was being too obvious and would be caught, correct?

A. Yes, sir, my intentions were to protect my employer.

Q. And in fact he told you, in effect, it had nothing to do with the Drew Fairchild matter, correct?

A. The ulitmate summation could be said that way.

Q. You don't have a problem with understanding what I say, do you?

A. No, sir, I just have problems with the way you're saying it.

Q. The bottom line, he told you there was nothing criminal about the transaction?

A. Bottom line is he denied it.

Q. Do you have a problem between denied and told you there was nothing criminal?

A. Yes, sir.

Q. Okay. May 83, over this lie detector issue, you were told don't -- you were no longer to come into the office, right?

A. That's correct.

Q. Your wife of course was still related distantly to him, correct?

A. Yes.

Q. Why are you smiling?

A. It's obviously, if she was related before she would be related afterwards.

Q. I appreciate it, I'm sorry, I didn't realize lies that was funny. In any event, he still kept you on the payroll, he enemies, correct?

A. I chose the firm that offered me a position.

Q. Was it not a fact you choose the firm with whom, the senior partner of whom was a bitter enemy of Wiley?

A. Mr. Zachary offered me a position, yes.

Q. Did you hear my question?

A. Yes.

Q. Was it relatively well articulated??

A. It was not a correct way of summation.

Q. Put it another way. Were Mr. Zachary, the senior Zachary and Wiley Fairchild at odds with one another?

A. Over the years I had heard that from Mr. Fairchild.

Q. Fairchild told you, he's no friend of mine, right?

A. That's correct.

Q. And you went to work for him, right?

A. That is correct.

Q. Before going to work for him, you started making these phone calls to the FBI, right?

A. That is correct.

Q. Okay. The thrust of it, you started by making some anonymous calls, right?

A. That is correct.

Q. You didn't want anyone to know what you were doing so you started calling them, telling them, dropping the seed that there was some oil man in Mississippi who had bribed a judge, right?

A. Your summation is incorrect.

Q. We're going to read from the transcript.

A. Please do.

Q. Then we'll see. Have you read them over?

A. I have.

Q. Okay. Is it not fair to say that what occurred is you were telling the FBI that the transaction you described here in court had occurred and that the backdating had occurred in order to hide the fact that it was done for purposes of influencing the Drew Fairchild case?

A. That's correct.

Q. Isn't that what you were doing?

A. That is correct.

Q. You didn't tell them who you were, you pretended you were some outsider with information, is that right?

A. That is correct.

Q. You had not one whit of information about what really had gone on in that transaction, had you?

A. That is incorrect.

Q. Did you know, have you ever discussed with Wiley Fairchild before November, how the negotiations first -- when the negotiations took place, leading to the assignments to Walter Nixon, did you ever talk to him about it?

A. No, sir, other than those two conversations that I had.

Q. So you knew nothing about the relationship of the dating of that discussion and the Drew Fairchild case, did you?

A. To answer that question would have to, will require me to relate comments that Wiley had made in my presence to us.

Q. That's fine. I have no problem. My question to you is, when did the Drew Fairchild case occur?

A. Fall of 1980.

Q. When?

A. I believe the actual plane landed in August of 80, and then Drew subsequently became involved about a month or two later, I'm not sure exactly when Drew's involvement --

Q. How did you learn about it?

A. We went in the office one morning and it was discussed there in Wiley's office.

Q. In February of 81, was there any -- did you know of any indictment against Drew? At that time in February of 81?

A. In February of 81 I knew that there was a plea agreement in federal court.

Q. And you assumed, I take it, what you were telling the FBI, in some way the deal, whatever it was, was connected to this transaction, correct?

A. Correct.

Q. You told the FBI in fact, without knowing anything, you had the temerity to accuse this man of having steered the case to the state, didn't you?

A. That is correct.

Q. Did you have an iota of information of how that transaction came about?

A. As far as this particular transaction?

Q. This transaction.

A. No.

Q. Do you know, sir, that it occurred in 1979 and early 1980?

A. Based on my dealings with Wiley, I would have known had it of taken place then.

Q. Sir, had you ever discussed -- who is Carroll Ingram?

A. He's an attorney here in Hattiesburg.

Q. Do you know that Carroll Ingram in 1979 discussed and arranged with Wiley Fairchild to sell an interest to Walter Nixon? Did you know that, sir?

A. If it had happened I would have known.

Q. You sit on that stand and tell me that you would have known everything that Wiley Fairchild did with Carroll Ingram?

A. No, I'm not going to make that statement.

Q. Can you tell this jury that no such communications occurred between Ingram and Fairchild?

A. I could not say that from the stand, no.

Q. But you didn't hesitate to accuse a human being of criminality, right?

A. Based upon the facts as they were presented to me, I can do that, yes.

Q. Based on your suspicious mind, correct, sir?

A. Based upon what the facts were as they appeared to me.

Q. The facts as they appear to you was somebody told you Wiley Fairchild called you in and said backdate this deed, correct?

A. That's correct.

Q. Okay. You had backdated deeds before, you testified to such. Am I correct, backdating is not uncommon, am I right?

A. That's correct.

Q. But you led the FBI to believe that backdating equated with criminality, didn't you?

A. Not necessarily just backdating, no.

Q. Did you tell them this is most likely the key, that the key to it is the backdating?

A. That would show the major portion of the case, yes.

Q. Let me understand something. Wiley tells you to do what he's done in other cases, backdate the deed, right?

A. Yes.

Q. That's a fact that he told you on February 25, 1981, right? Or few days later?

A. First week of March, 1981.

Q. Do you know what communications he had with with Carroll about the backdating, Carroll Ingram?

A. No.

Q. Carroll is a lawyer, right?

A. That is correct.

accused him that everything was backdated prior to the date of the arrest. Isn't that what you said?

A. That is correct.

Q. And that that was done to show that the reason for the backdating was to conceal that it was connected to the Drew Fairchild case. Correct?

A. That was my assumption at that time.

Q. Pure assumption and that's what you're telling the FBI?

A. That's correct.

Q. You did not have any evidence whatsoever that the two were linked at all. Correct?

A. Other than comments coming from Wiley Fairchild himself, no.

Q. You told us the two comments, his denial that they had anything to do with it and his desire to get the case before Judge Nixon in federal court, this other case?

A. And his comments that they were trying to up the ante, they wanted more to handle it.

Q. Let's come to that next, I want to come to that next. We'll come right to it. Okay?

A. Okay.

Q. But let's do it in order. Okay?

A. As.

Q. As I understand it you then told them on the next page or perhaps at -- at page 14, excuse me. The phrase you just used.

MS. LITTLE: Objection. I don't think we should be assuming facts not in evidence.

MR. FAWER: I can ask him a hypothetical.

THE COURT: Let's take a recess. I think you're going too far, Mr. Fawer.

MR. FAWER: Thank you.

(Recess.)

THE COURT: Proceed.

MR. FAWER: Thank you, Your Honor.

BY MR. FAWER:

Q. Let's pick up, Mr. Jarvis, where we left off. Take a loo at Page 16. You engage -- I take it at the bottom of Page 16, you engage, you tell the FBI that in fact what the deal was, a I quoting you correctly, as a matter of fact, see the deal with Nixon was to keep it shut down on the federal level to get it, to get the state to handle it. Is that what you told them?

A. That's correct.

Q. Okay. You made an accusation not only that Nixon was bribed, but what he was to do was to have this case shut down on the federal level, steering it to the state, correct?

A. That's correct.

Q. You knew not one whit about judge Nixon's involvement on anything to do with this case on the federal level, did you?

A. No.

Q. You did not know as you sit here, you don't even know now

Q. Sent copies to you?

A. Getty copied us.

Q. You got copies of Carroll's letters to the company, right?

A. I don't think we got copies of his letters to them; we've got copies of Getty letters to Ingram.

Q. Replying to Ingram?

A. Right.

Q. It's clear that the re, the subject matter is Walter L. Nixon, right on the document; you want to see it?

A. No, I accept that.

Q. You've seen it?

A. Right.

Q. Nobody, Carroll's not hiding it's Walter L. Nixon, right?

A. Right.

Q. Nobody is at that point, right?

Q. So you go to Wiley and say, look, I understand that back in February when you prepared the deeds the grantee was blank. You need to have on our records, we need to know what the consideration is, we need to know who the name is so we know who the royalty goes to, we have our records complete. Did you say anything to him like that?

A. No, sir, I did not.

Q. You instead engaged in your suspicions, right?

A. Based on what I was seeing happening, yes.

Q. What you were seeing happen was the bribing of a federal judge before your very eyes?

A. At that particular point I was seeing the extortion of Wiley Fairchild.

Q. The extortion of Wiley Fairchild by Judge Nixon?

A. Judge Nixon and Carroll Ingram.

Q. So it was Wiley who was being extorted by Judge Nixon and Wiley was then going to attempt to murder you?

A. No, there was several events and changes that took place.

Q. In between. You are simply surrounded with criminality, right?

A. I don't think that's an accurate statement.

Q. We'll see if we can tie it together, okay. In any event, when you had a question raised, did you know that Carroll Ingram had the notes that Judge Nixon had signed back in early 81 in his possession the whole time?

A. I never saw those notes before early 1982.

Q. Before when?

A. Before 1982.

Q. Fine. They are dated February 25, 1980, they were backdated to the same date as the deeds that you prepared, correct?

A. That's correct.

Q. Okay. Throughout 1982 you had phone calls from -- Judge Nixon's office called on occasion?

A. His secretary.

A. There's nothing on that note to indicate what they were for.

Q. You don't really have any doubt that these notes were for the three assign minutes, do you?

A. There are three notes payable to W. R. Fairchild Construction Company, one of the grantees had been Fairchild Windham.

Q. Sir, are you telling me the notes, they just introduced the three notes through you, the three notes totaling 95 hundred are in payment of the three assignments, aren't they?

A. That's what I was told.

Q. Okay. Now the royalty payments start coming in in early 82. Right.

A. That's correct.

Q. The royalty money comes to Judge Nixon, he can wait until February of 83 to make the payments, if he chooses to?

A. That's correct.,

Q. Instead some money is coming in, he operates to take a portion of it and pay down the notes. Right?

A. I'm not sure what was in the judges mind. He made payments, yes.

Q. It's fair to say the payments came shortly after he received some royalty checks?

A. That's correct.

Q. You know that's the fact. Right?

A. That's what I just said, yes, that's correct.

Q. So what is mysterious about that, if someone has money available from the very investment that he has financed, what's mysterious about making payments on it?

A. What's mysterious on making payments on it was the conveyance was made with apparently no payment, no notes, no nothing, for a year. I confront Wiley, the notes show up and all of a sudden, (snaps fingers), we are making payments on the notes.

Q. The notes were not prepared by you. Correct?

A. That's correct.

Q. These notes, do you know they were prepared by Carroll Ingram?

A. I have no idea who prepared them.

Q. But if Carroll Ingram prepared them at the same time you prepared the deeds is there any validity changed that Carroll Ingram held them in his possession until he sent them over to you?

A. We normally did not convey things and then wait to receiv our payments on them.

Q. As I say, assuming with all the human frailty that some of us have, Ingram kept the notes in his file instead of sending them over to you, he had the Judge's signature on them, are they still valid notes if they're sitting Ingram's files instead of yours?

Q. First answer that one.

A. We backdated things when it was necessary, sir.

Q. So you don't know -- what do you mean necessary, or proper? What do you mean necessary?

A. When necessary when it was to our advantage, sir.

Q. In other words, you're saying you backdated only to accomplish an improper end?

A. Well, on these particular instruments, sir, it was not necessary to backdate. They were effective the date of first production, so it was irrelevant what date they were dated.

Q. Excuse me. If the value was paid, a value had been agreed upon a year earlier, should not the deed reflect and the notes reflect, be dated when that value was agreed upon?

A. That's your opinion, sir.

Q. I'm asking you. Wouldn't that be a perfectly legitimate reason for dating it back to the date of the transaction?

A. It would not be necessary since they were effective the date of first production.

Q. Is necessary -- is necessity the only reason for doing things, or is propriety and logic as well as a reason for doing it?

A. If it was proper and if it was logical that everything was concluded back in 1980 Mr. Ingram would have corrected the amount of acreage and we wouldn't have had to go back and red the second set of deeds.

# EXCERPTED WITNESS TESTIMONY

## JUDGE WELDY

A. I think so. Now insofar as circuit's concerned. In some of the other courts it's a more frequent thing.

Q. But in Forrest County it's your testimony that you can remember one other instance when a case was passed to files and then came back?

A. As I say, I wouldn't give you a name, but I think that there have been instances where they have been brought back for disposition.

Q. Do you know any other instance when a case was passed to the files after a guilty plea?

A. No, I think Mr. McCain's case ended in a mistrial and that was passed to the file.

Q. So this would be the only one that was passed to files after a guilty plea that you know of?

A. As far as I can recall right now, yes.

Q. And of all the other cases that were passed to files that you know of only one other instance did a case come back to the file -- back from the file?

A. Best of my recollection.

Q. Did you make any independent effort to determine whether or not the facts alleged by the district attorney's office in this order were correct?

A. No independent investigation, no, sir.

Q. Did you make any inquiry of representatives of the district attorney's office to find out whether or not the facts alleged

# EXCERPTED WITNESS TESTIMONY

## GLEN WHITE

passing Drew's case to the files?

A. Subsequent to his indictment.

Q. What did he say?

MR. PAWER: Excuse me, this is subsequent to Bud's indictment. He's eliciting testimony from him of what Bud Holmes, not the defendant, said to him after Bud Holmes made his plea agreement with the government.

MR. WEINGARTEN: No, after his indictment.

MR. PAWER: When was it, though.

THE WITNESS: In pretrial preparations when he was interviewing me.

MR. WEINGARTEN: May I proceed?

THE COURT: Proceed.

BY MR. WEINGARTEN:

Q. And what did Mr. Holmes say to you?

A. Said that he was, the only thing he was concerned about in the indictment was the allegation about the telephone call.

MR. PAWER: May we approach the bench, Your Honor. Does this have to do with passing the case to the files?

MR. WEINGARTEN: Yes.

MR. PAWER: Okay, go ahead.

BY MR. WEINGARTEN:

Q. Please continue.

A. He informed me at that point in time there were other reasons for passing it to the files I was not aware of at the time.

Q. What did he say to you?

A. Boils down to he told me he had been out to the farm, there was a phone call made he had not disclosed to the government, as a result of conversations that he had, that was one of the reasons that this order was prepared, that I did not know about.

Q. Did he mention anyone else involved with the phone call?

A. Mentioned that he and Judge Nixon were at the farmhouse, they made the phone, they had a phone call.

Q. Did he indicate who that phone call was made to?

A. Wiley Fairchild.

Q. Did you know anything about that when you prepared this order?

A. Absolutely nothing.

Q. Exactly what time or where in connection with other legal events did Bud Holmes tell you this?

A. It was in preparation for his trial when I found all this out. He was interviewing me, the attorneys were interviewing me concerning his case that he was coming up on.

Q. When you heard Judge Nixon's name, did you make any connection with any prior relationship Bud Holmes had with Judge Nixon?

A. They were friends.

Q. How do you know that?

Q. And in fact it was Reid Weingarten and Glenn White who worked together?

A. Yes.

Q. Just getting back to questions about passing the case to files. Do you have a copy of it right before you?

A. No, sir.

Q. Okay. Let me hand you Government Exhibit 4. In your experience in the DA's office, I think you've testified that you've been there your entire legal career?

A. Correct.

Q. How is, how is that legal device, passing a case to the files, normally used?

A. It can be used in various ways. Number one, if you have a weak case, pass it until something comes up. Number two, defendant pleads guilty to one charge, you have three others, you pass the others to the files. It's an inactive drawer what you're doing.

Q. It's a dead file?

A. It's not dead, but it's inactive. You don't normally mess with them again.

Q. In the great, great majority of cases, when a case is passed to files, does that mean that's the end of it?

A. In the majority of the instances, yes.

Q. Is it fair to stay, in the normal usage around the courthouse in Forest County, when someone hears a case is passed to files, that means that's the end of it?

A. That would be fair to say. People would have that connotation, yes.

Q. Would it generally be accurate?

A. Predominantly in the majority of instances, yes, it would.

Q. Now in this instance, is it fair to say when Bud Holmes instructed you to prepare an order that you were concerned?

A. Yes.

Q. That you thought it was a highly unorthodox thing to do?

A. It was the only time I've done one like this.

Q. In fact, was your response just flat out bizarre?

A. It was strange. That's the reason we had a long discussion about it.

Q. And this order ensued, right?

A. Yes.

Q. I note that, who picked the language?

A. He gave me some facts and some reasoning, and I drafted it up basically.

Q. In the order itself, I guess the DA prepares the order and then presents it to the judge for signature?

A. Correct.

Q. There is mention of alleged cooperation by Drew Fairchild, is there not?

A. Yes, there is.

Q. Cooperation with the Mississippi Bureau of Narcotics and supposedly the federal government. Did you know of any cooperation on Drew's part with the Mississippi Bureau of Narcotics?

A. Personally, I knew nothing about the facts of the case, had not read the file, did not know anything. Katy Matison and Bud worked the case up. I would have to confess my ignorance, I didn't know anything except what I heard and what they told me.

Q. You had no independent knowledge whether that was true or not true?

A. No.

Q. Do you know now one of the complaints up in the federal system with Drew, that he hasn't satisfactorily cooperated?

A. I've learned that since this time, yes.

Q. In the order it says supposedly, cooperated supposedly with the federal government concerning the investigation?

A. Yes.

Q. Did you put supposedly in because you were concerned?

A. I didn't know. I was concerned alleging something about the federal government's -- I just didn't know.

Q. Is it fair to say you were trying to fill it with the information that would justify it, but you were terribly, terribly, terribly concerned with the propriety of this document?

A. I was concerned about the implications that we have, yes.

Q. On the second page, you talk about the defendant's right to a speedy trial. He had pled guilty at that point, had he not?

A. Yes, he had.

Q. What concern was there about his right to a speedy trial?

A. That language was put in there, well, in essence Bud indicated Porter had said he was concerned about him having speedy disposition on the sentencing. As far as trial, it did not affect the 270 day rule which is law in the state of Mississippi.

Q. Well, if in fact, passing a case to the file doesn't toll any speedy trial rule?

A. No.

Q. So that was a justification that was put in here without any meaning?

A. Not really, no. It never, I had never come across a case like this before.

Q. Is it fair to say Bud was just grasping for anything he could to fill on this paper for an order to be presented to the judge to pass Drew's case to files?

A. He -- that would be fair. He would say, Bud was the type of person, when he would say something, he'd go make an agreement, he wanted it done that way, trying to figure a way to do it.

Q. You were following instructions in this instance?

A. Yes.

Q. All right. Would you have done an order such as this based on any of the justifications that Bud gave you?

A. Would I have done this?

Q. Yes, based on the justifications Bud gave you at that time?

A. I probably would not have passed it to the files.

Q. Just let's go through his explanation, why did he want to do it? What were his reasons?

A. He had agreed with Bill Porter to pass the case to the files because he was concerned about Dickie McKenzie would not honor the plea agreement, he had agreed with Porter he would not --

Q. Let's take the first one. If Dickie McKenzie was the judge, if it ever came back from files, who was going to be the judge?

A. Dickie McKenzie.

Q. That makes no sense. I'm serious, that's ridiculous.

A. He was concerned he would be sentenced the first week or whatever it would come up, without him having to testify in trial, Dickie could be, get him up in the front of Dickie, and Dickie could sentence him.

Q. If the case went to files and ever came back, who would be the judge?

A. Dickie McKenzie.

Q. Is it really fair to say that business with Porter is patently absurd?

A. I don't think it's absurd.

Q. I mean it makes no sense. If the concern was Drew was going to get sentenced by Dickie McKenzie and the case was passed to file, unless the case died there, it Drew was ever to be sentenced he would be sentenced before Dickie McKenzie?

A. True.

Q. Okay. What other reasons did he give you?

A. He was concerned about Dickie McKenzie taking over. That he was concerned that he wanted him to testify prior to being sentenced so he would insure the cooperation and testimony of Drew.

Q. That had been established for a year, had it not?

A. That he would testify.

Q. You secured that with a series of continuances; Drew had not been sentenced. The testimony had not been secured. You were in a position -- the day before this order you were in a position to use Drew Fairchild as a witness against Watkins, the fugitive?

A. True.

Q. You didn't have to pass the case to files to maintain that situation?

A. No. Did we have to?

Q. Yes.

A. No.

Q. That justification appears a little flimsy.

A. He said he had an agreement with Porter, that was the crux,

# EXCERPTED WITNESS TESTIMONY

## KATIE MATISON

A. Oh, yes.

Q. Is it fair to say you were shocked?

A. Yes.

Q. Why were you shocked?

A. Because as I stated earlier, Robert Watkins' returned to the state of Mississippi was imminent and his extradition hearing had been scheduled in Florida for the first day of February of 1983, so we expected to bring him back at any time, and the order recited that because of Robert Watkins' absence from the state of Mississippi, that this would enable, be some sort of vehicle for -- to continue Drew Fairchild's case.

Q. You found that preposterous?

A. Yes.

Q. Was there anything else about the order that you found strange?

A. Well, in looking at the order, it does recite that Drew had cooperated with the federal government, which is contrary to what Bud had told me in July of 1981.

Q. Did Bud explain that the state had received the case precisely because Drew had not cooperated?

A. He had said that, yes, Mr. Weingarten.

Q. Okay. When Bud spoke to you later after the investigation began and attempted to implant a story about passing the case to files, how did he justify it to you?

A. As I stated earlier, he said that Bill Porter and Drew

# MEMORANDUM CONCERNING
# THIS SUBCOMMITTEE'S DUTY TO INVESTIGATE
# WHETHER JUDGE NIXON WAS TARGETED FOR
# INVESTIGATION BECAUSE OF THE PETIT BOIS ISLAND CASE

Submitted To The Subcommittee On Civil
and Constitutional Rights And Liberties
Of The House Judiciary Committee
On Behalf Of Judge Walter L. Nixon, Jr.

June 7, 1988

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## INTRODUCTION

There is considerable evidence that the Justice Department has been seeking since 1983 to justify -- and perhaps overturn -- an embarrassing and costly litigation loss before Judge Nixon by proving that the Judge was corrupt. If this retaliatory motive is true, the entire investigation of Judge Nixon presents critical questions about the relationship between the executive and judicial branches. Should the government be free to target a federal judge for criminal investigation when it is unhappy with that judge's decision? Can the judiciary remain independent if it faces such potential intimidation? Can private citizens expect equal justice when they challenge executive action? And, for Judge Nixon personally, were his convictions for giving false statements to a grand jury manufactured based on totally improper motives?

These issues are heightened because of the peculiar nature of the Public Integrity Section of the Justice Department. Once the investigation was begun, that office had no incentive to admit Nixon's innocence, but every incentive to pursue him until they found or created indictable conduct. Successful prosecutions breed reputation; so, in a very different sense, do failures. The Public Integrity Section's sole purpose is to prosecute public officials, and its reason for existence is destroyed if it spends two years investigating an official who turns out to be blameless.

This Subcommittee should investigate the evidence that we have been able to uncover. Our investigation is admittedly incomplete, hampered by limited access to relevant government records and officials. What we have found, however, indicates that the government has repeatedly accused Judge Nixon of nefarious conduct in connection with Petit Bois Island and investigated him through two grand juries, but never identified any reliable evidence of corruption.

## 1. Judge Nixon Rules Against The Government In The Petit Bois Island Case

On March 29, 1982, Judge Nixon ruled in United States v. 717.42 Acres of Land, a condemnation action brought by the United States to acquire property on a six-mile long barrier island in the Gulf of Mexico, Petit Bois Island. The defendants were John Stocks, a land developer who acquired the property with plans of developing a resort community, Eugene Lewis, his general counsel in the investment and an investor himself, and numerous individuals who had purchased tracts of land on the Island. Judge Nixon ruled that the fair market value of the condemned land was $6.2 million. In making that factual finding, Judge Nixon rejected a government valuation of $330,000, an estimate that assumed that the only practical use of Petit Bois Island was as undeveloped parkland.

On the facts presented to him, Judge Nixon's decision was correct and the government elected not to appeal. As explained in a memorandum from Assistant Attorney General Carol E. Dinkins, "[h]aving reviewed the full transcript of the 6-day trial, we can find no substantial basis on which to quarrel with the court's fact-finding . . . . All those familiar with this case are agreed that this acquisition went badly from start to finish." Ex. N-31, p.11. When the government filed post-trial motions too late, Judge Nixon's denial of those motions as untimely was affirmed by the Fifth Circuit in a one paragraph order concluding "the government's negligence in this case precludes awarding relief." United States v. 717.42 Acres of Land, et al., No. 83-4636 (5th Cir. 1984).

Judge Nixon's decision was embarrassing and expensive for the government. With interest, the judgment compelled the government to ask Congress for approximately nine million dollars to pay for an island whose value to the government as parkland was only $330,000. The Justice Department's failure came on the heels of a "$22.5 million [condemnation] debacle," also in the Fifth Circuit, United States v. 499.472 Acres of Land (Byan Mound Salt Dome). Ex. N-31, pp. 11-12. As Ms. Dinkins concluded, the Petit Bois Island case compounded the Justice Department's already significant "embarrassment." Id.

### 2. A Grand Jury Is Convened To Investigate Judge Nixon's Ruling Against The Government

In the early spring of 1983, soon after the government made its initial $3.5 million payment to the Petit Bois landowners, a grand jury investigation into the Petit Bois Island condemnation proceeding began in Tallahassee, Florida. As early as May 1983, a source who was anonymous but "'very knowledgeable and well informed of the FBI investigation'" telephoned John Stocks with the message not to worry about the investigation because it was not targeted at him, but rather at a "'high government official.'" Apalachicola Times, 5/26/83 (quoting John Stocks).

It did not take long to learn the truth of the anonymous message, or that the targeted official was Judge Nixon. In June, a grand juror asked one witness, Eugene Lewis' secretary, if she knew who had selected the judge for the Petit Bois condemnation proceeding. And during the summer of 1983 an FBI agent specifically questioned David Sanders, who sold the Petit Bois Island property to Stocks, as to how the case had been engineered to be heard by Judge Nixon and whether Judge Nixon had any interest in Petit Bois Island or other investments with Stocks. Sanders was incredulous at the implication of the questions. Ex. N-33.

### 3. Although It Convened A Grand Jury To Investigate Judge Nixon, The Justice Department Had No Basis To Believe Judge Nixon Guilty Of Any Misconduct

The government did not base its investigation on any evidence of misconduct by Nixon. Thus, Ms. Dinkins' conceded that Judge Nixon's decision was unassailable on appeal. More significant, in the May 1988 affidavit of Ralph Drury Martin, trial attorney for the Public Integrity Section of the Justice Department, Martin states that the Tallahassee grand jury never had any "specific allegations of wrongdoing by Judge Nixon." Ex. N-34. Indeed, the only information regarding Nixon, Martin notes, is that the U.S. Attorney's office, at some point in 1983, learned that Stocks and Lewis supposedly had attended a party at which Judge Nixon was present. Id. But Martin neither identifies the source of that information nor comments on its reliability.

### 4. The Dying Investigation Is Rekindled

Not surprisingly, in the absence of any evidence of wrongdoing, the Tallahassee grand jury investigation was flagging by late 1983. But in November the FBI received three anonymous telephone calls in which the caller falsely accused Judge Nixon of corrupt financial dealings with Wiley Fairchild of Hattiesburg, Mississippi. These suggestions of a second bribery scheme were unrelated to Petit Bois Island, but rekindled interest in that investigation. These three telephone calls, made by Robert "Skip" Jarvis, involve coincidences that require diligent investigation.

First, although Jarvis had been suspicious of Nixon's oil investments with Fairchild for at least thirty-three months, his calls came at an ideal time for those intent on pursuing Judge Nixon for Petit Bois Island. Did Jarvis independently decide to act? Or did he somehow learn of the unfounded government allegations against Judge Nixon in the Petit Bois Island investigation and see an opening?

Second, Jarvis had been involved in an FBI investigation of Circuit Judge Sam Smith of Lake City, Florida. See United States v. Smith, 588 F.2d 111 (5th Cir. 1979). We have been advised that Agent Don Baldwin participated in the Judge Smith case, and we know that Jarvis referred to that case when he became involved in the Judge Nixon investigation. Ex. 21, p.27-28. Did Jarvis and Agent Baldwin, who was principal agent in the Petit Bois Island inquiry, discuss the case and somehow cause the anonymous telephone calls? Baldwin already had violated proper standards for investigative conduct. In July 1983, Lex Thompson, an investor in Petit Bois Island, agreed to an interview with Baldwin if Thompson's answers were placed in a sworn statement that he would have an opportunity to review and sign. Although Baldwin agreed to those conditions, he later refused to provide Thompson with any document to review or sign. See Ex. N-32.

Third, while the FBI has transcriptions of the second and third "anonymous" calls from Jarvis, no transcript of the first call, in which Jarvis likely explains why he is calling, has been produced.

Jarvis' telephone calls kept the Petit Bois Island investigation alive. In March or April, 1984, FBI Agent Cletus Blake interviewed Joe Denson, regarding any meetings between Stocks and Nixon concerning Petit Bois Island. Agent Blake made clear that Nixon was their target, telling Denson "we are going to get his ass."

### 5. A New Grand Jury Is Empanelled

In May 1984, the Public Integrity Section convened a new grand jury in Mississippi to investigate Petit Bois Island and Judge Nixon's relations with Wiley Fairchild. Because Judge Nixon sat in Mississippi and would ordinarily preside over the grand jury, the grand jury was designated "special," and another judge presided. The Public Integrity Section then transferred the proceedings before the Tallahassee grand jury to this special "Nixon" grand jury. Ralph Martin's 1988 affidavit offers no explanation for transferring the investigation, but assures that "[t]he two matters . . . always proceeded . . . separate[ly]." Ex. N-34. Martin also asserts -- despite Agent Blake's statement to Joe Denson -- that Nixon was viewed merely as a witness in the Petit Bois Island matter. Id.

### 6. Prosecutors Threaten Witnesses To Obtain Evidence Against Nixon Relating To Petit Bois Island

The special grand jury investigated both the Petit Bois and Fairchild matters during the latter half of 1984 and into 1985. Although there was no evidence of wrongdoing by Judge Nixon on the Petit Bois Island matter, see Ex. N-34, ¶ 5, he was still the target. During Eugene Lewis' testimony before the grand jury on May 30, 1985, the prosecutor apparently inquired into whether Lewis, or anyone else associated with Petit Bois Island, bribed Judge Nixon. See Ex. N-36, p.2. We have no idea how many other times the special grand jury listened to unsubstantiated allegations by the prosecutor of bribery.

On October 24, the Public Integrity Section again asked Eugene Lewis about any bribes of Nixon. His denial of any bribe prompted the government, for the first time, to threaten a perjury indictment for testimony obtained in a classic "perjury trap". Ex. N-35, p.4. [3] Several days later, the government again approached Lewis for evidence of Nixon's corruption, but again came away empty-handed. Id.

Similarly, just before indictment Stocks also was offered a deal under which he could walk free from criminal charges in exchange for testimony incriminating Nixon. Stocks, too, could offer no evidence of Nixon's corruption. See Ex. N-37, N-38. Both Stocks and Lewis were indicted on October 31, 1985 for obstruction of justice and perjury. Both were acquitted following trial.

Although Stocks and Lewis could provide no evidence of wrongdoing by Judge Nixon on Petit Bois Island, the government generated the first such allegations during the late summer or fall of 1985. W.P. "Pat" McMullan, during plea negotiations over a variety of charges against him, alleged that Stocks and Lewis paid Nixon $300,000 in exchange for the Petit Bois Island decision. Ex. N-34, ¶ 5. McMullan's allegations could not be proved. Id.

---

[3] Lewis had been asked before the grand jury whether he had signed a particular document in the course of acquiring land on Petit Bois Island. The prosecutor at that moment had in his possession the document with Lewis' signature. The document was not shown to Lewis, and when Lewis testified that he did not think he had signed such a document, the document was not produced to refresh his recollection. The trap had been sprung and the charge was later used as a club to try to coerce testimony against Nixon.

The effort to find a crime in the Petit Bois Island case would not die. In April 1986, Peggy Lehner, who worked in Stocks' office, was examined before the special grand jury in another unsuccessful, and to our knowledge final, attempt to link Judge Nixon to a bribe from Stocks or Lewis.

## CONCLUSION

Our inquiries regarding Petit Bois Island have been conducted without the power of subpoena, without the benefit of most of the grand jury testimony, and without access to government investigative records. Nevertheless, we have uncovered considerable evidence that Judge Nixon was targeted by the federal government for his Petit Bois Island decision. The investigation was initiated without any evidence of wrongdoing and continued for over three years and through two separate grand juries without ever identifying any reliable testimony that Judge Nixon did anything wrong concerning Petit Bois Island.

The federal government, unlike all other litigants, has the power to initiate a criminal investigation of the judge who rules against it. We know that is what the government did in this case. And we know that the resulting investigation never unearthed evidence of crimes by Judge Nixon. We do not know, however, the links between the Petit Bois Island investigation and the Fairchild to which it was joined. Indeed, we doubt whether the Hattiesburg grand jury ever would have been empanelled based only on Skip Jarvis' unsubstantiated and anonymous allegations. But the government was already gunning for Judge Nixon when those irresponsible allegations were received.

In these circumstances, Congress owes a duty to the federal judiciary and the constitutional separation of powers to investigate this apparently vindictive and retaliatory investigation of a federal judge. There are too many questions raised here -- and the answers are too important -- for Congress merely to turn away from this issue.

Respectfully submitted,

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# MEMORANDUM CONCERNING THE TRUTHFULNESS OF JUDGE NIXON'S GRAND JURY TESTIMONY OF JULY 18, 1984

Submitted To The Subcommittee On Civil
and Constitutional Rights And Liberties
Of The House Judiciary Committee
On Behalf Of Judge Walter L. Nixon, Jr.

June 7, 1988

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## INTRODUCTION AND SUMMARY

Throughout this case, Judge Walter L. Nixon, Jr. has maintained that he did not commit perjury in his grand jury testimony of July 18, 1984. We welcome this opportunity to establish his innocence. The jury's verdict to the contrary was the product of a profoundly unfair trial, which was manipulated by government representatives who were unconcerned with justice, but rather were consumed with a fever to convict a federal judge -- the "big prize," as one of the government's collaborating witnesses put it. Ex. N-17.

Judge Nixon, who has served with distinction on the federal bench in South Mississippi since 1968, was indicted in July 1985 on one count of receiving an illegal gratuity and three counts of giving false testimony to the grand jury investigating the alleged gratuity. In February 1986, he was acquitted of the gratuity charge and on one of the false statement counts. Judge Nixon was convicted, however, on two counts of giving false testimony and was sentenced to concurrent five-year terms. After his appeals were unsuccessful, Judge Nixon began serving his sentence on March 23, 1988. A Motion to Vacate the Conviction is pending, based largely on newly discovered evidence of prosecutorial abuses that hindered the jury's ability to determine the facts accurately. We hope there will be an evidentiary hearing on that Motion this summer.

Judge Nixon's alleged false testimony consisted of (i) his denial that a state prosecutor, Bud Holmes, had discussed "the Drew Fairchild case" with him, and (ii) a statement volunteered at the conclusion of his testimony that he had not talked to anyone to influence the Drew Fairchild case. The specific testimony was:

> Count III
>
> "Q: Did he [Bud Holmes] ever discuss the Drew Fairchild case with you?
>
> "A: No, not to the best of my recollection. I think I would recall if he had."

> Count IV
>
> "Now, I have had nothing whatsoever officially or unofficially to do with the Drew Fairchild criminal case in federal court or state court . . . I never handled any part of it, never had a thing to do with it at all and never talked to anyone, state or federal, prosecutor or judge, in any way [to] influence anybody with respect to this case."

In this Memorandum, we will establish two basic points. First, we will show that Judge Nixon's grand jury testimony was true and could not properly be the basis for either a perjury conviction or impeachment. We recognize that Judge

Nixon's convictions make our position more difficult, but we implore the Members of this Subcommittee to review the evidence closely and reach their own conclusions about the supposed false statements. In order responsibly to discharge its constitutional impeachment powers, Congress cannot allow unjustified convictions to create any presumption that Judge Nixon should be impeached. That, we submit, was the lesson of the Senate's refusal to convict Judge Harry Claiborne on the Impeachment Article that alleged that he should be removed from office solely because he had been convicted in court.

We will show not only that Judge Nixon's testimony was truthful. We also will show that there were three other grand jury witnesses who, like Judge Nixon, did not disclose to the grand jury in July 1984 their knowledge of certain events that Judge Nixon supposedly wrongly failed to disclose in his testimony. But the nondisclosures by those three other witnesses -- who, after all, were not the "big prize" -- were apparently not considered serious; not one of them was indicted for his failure to disclose that information.

Second, we will show that the Public Integrity Section denied Judge Nixon a fair trial through a variety of improper actions, including (i) bringing an illegal gratuity charge against him that the prosecutors knew they could not prove; (ii) using the grand jury to manufacture perjury charges and then offering bargain-rate plea bargains to the victims of those tactics in return for incriminating testimony about Judge Nixon;

(iii) concealing material facts about government promises to a central witness; and (iv) knowingly allowing witnesses to testify in an incomplete and misleading manner.

In grasping for the "big prize," the Public Integrity Section lost sight of fairness and justice. The Subcommittee must recognize that these abuses, and others, went to the heart of the truthfinding process at trial, and are directly relevant here because they account for convictions in the face of extremely weak evidence presented at trial. At the House hearing on the impeachment of Judge Claiborne, Ninth Circuit Judge Charles Wiggins emphasized that such prosecutorial abuses are directly relevant to the impeachment determination. 1/

Indeed, the Subcommittee must appreciate just how weak the record of the Hattiesburg Special Grand Jury was. As shown in the chart we have attached as Appendix A to this Memorandum, in investigations relating to Judge Nixon, that grand jury indicted Judge Nixon and four other individuals, on a total of 17 separate felony counts. Of those 17 charges, eight were rejected by juries through not guilty verdicts and six were dismissed by the Public Integrity Section as part of two plea bargains that generated one felony conviction and a grand total of 39 days of

---

1/ "Conduct of Harry E. Claiborne, U.S. District Judge, District of Nevada," Hearing Before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Judiciary Comm., 99th Cong., 2d Sess., June 19, 1986, p.42.

actual jail time. The two remaining charges resulted in convictions -- both against Judge Nixon, the "big prize."

We also want to emphasize what Judge Nixon's conviction did not involve:

-- No substantive crime ever has been proved against Judge Nixon.

-- There is no allegation that Judge Nixon received a single penny in illegal profits or income.

-- There never has been any allegation that Judge Nixon abused or misused his commission as a federal judge.

Because this Memorandum is so long, we submit today a separate Memorandum addressing the Petit Bois Island issue and the many questions raised by that case. Similarly, we do not repeat the arguments we submitted in our April 14, 1988 memorandum to the Subcommittee (Ex. N-41), particularly:

(i) That constitutional precedents require Congress to undertake a full and independent investigation concerning Judge Nixon, and that Congress may not rely upon the fact of his conviction as a basis for impeachment;

(ii) That Congress should stay its action until the District Court can rule on the pending post-conviction challenge to Judge Nixon's conviction;

(iii) That the House should affirmatively investigate the evidence of government misconduct in this case; and

(iv) That the constitutional phrase "high crimes and misdemeanors" has a narrow meaning, primarily related to official misconduct, and cannot be applied to the technical and entirely unproven allegations against Judge Nixon.

This Memorandum first will review the factual record, and then will explain the lack of merit in each of the charges against Judge Nixon. When the evidence is fully understood, the Subcommittee will realize that no misconduct occurred.

## I.

## FACTUAL BACKGROUND

### A. Nixon's Investment With Wiley Fairchild

The grand jury investigation focused on Nixon's investment in three oil properties controlled by Wiley Fairchild ("Wiley"). Nixon, who has seven children, asked several friends about possible investments in 1979. Tr. 1451-53, 1472-75. He talked with a long-time acquaintance, Carroll Ingram, about possibly investing with Fairchild, a successful oilman and a relative of Ingram's for whom Ingram had done legal work. Tr. 1476-77.

After consulting with Wiley, Ingram reported in 1979 or 1980 that Nixon could invest in three oil properties for $9,500. Tr. 1483-84; 1036-37. The relevant deeds were not executed until February 1981, but were dated February 1980, or roughly when the agreement had been reached. Tr. 1044, 1118, 1053, 593-94.

Judge Nixon intended to take out a loan to complete the investment, Tr. 1491-92, but instead Wiley offered to take promissory notes for the sale price plus 10 percent interest, payable by February 25, 1983. See Ex. 5. Judge Nixon paid the notes off in 1982 and 1983. Tr. 1519, 1527; Ex. 5, 10. Two of the three oil properties turned out well, returning over $50,000 in income, while the third was entirely unsuccessful. Ex. 11.

The Fairchild investment was not a unique venture by Judge Nixon. He also entered at least three other oil and gas ventures in 1981, none of which returned a profit. Ex. N-20.

Wiley testified that he was eager to set up an investment with Judge Nixon, in considerable part because he wished to be on good terms with Judge Nixon, who was an influential man. Tr. 493-94. But Wiley, who set the price on the properties purchased by Judge Nixon, Tr. 1107, made a tremendous profit on the properties he sold to Nixon, earning returns ranging between 1300% and 8,000%. Ex. N-14.

When the investment was closed, Fairchild and Judge Nixon met briefly. Wiley explained to Nixon that the oil business is risky. Tr. 601. Wiley also recalled the judge commenting that "If I can ever help you, I'll help you, if I can't I'll just tell you I can't." Tr. 602. Far from being a sinister commitment to join Wiley in skulduggery, Judge Nixon's statement plainly conveyed to Wiley that the judge would not perform improper favors for Wiley. Indeed, when a lawsuit involving another of Nixon's oil investments came before him, he immediately recused himself from the case. Tr. 1504-05.

Finally, there was never anything secret about the investments. The deeds to Nixon were publicly recorded, see Exs. 3, 4, and Judge Nixon dutifully reported them on the annual disclosure of assets form for the federal judiciary. Ex. 26.

### B. Drew Fairchild's Legal Problems

Drew Fairchild, who was 46 years old in 19[illegible], was estranged from his father, Wiley. Tr. 135-36. Drew's legal problems began in August 1980 when federal agents seized a plane full of marijuana at the Hattiesburg Airport. Although Drew had been connected to the marijuana scheme, he was not among those indicted by the federal grand jury on August 19, 1980. Drew discussed his fear of criminal charges with a lawyer, Bill Porter, and Porter set up a meeting with Paul ("Bud") Holmes, the local district attorney. Tr. 137-40.

Holmes recommended that Drew try to cut a deal with the U.S. Attorney in Jackson, George Phillips, and arranged an appointment with the U.S. Attorney. Drew and Phillips agreed to a plea bargain calling for five years of probation and a $15,000 fine, which was set forth in a memorandum dated November 19, 1980. Ex. 2; Tr. 141-44.

Four months later, Porter sued Drew for a $10,000 fee allegedly due for handling the plea bargaining. Ex. N-2. In July 1981, Wiley paid Porter $2,669.19, Ex. 6, but Porter remained dissatisfied and complained to Bud Holmes about the unpaid fee. Tr. 732-34, 796, 837-38.

Incredibly, Holmes offered to prosecute Drew to help collect Porter's fee. He called U.S. Attorney Phillips and asked to take over Drew's case, since state and federal authorities both had jurisdiction over the case. Tr. 732. Holmes admitted that collecting Porter's fee was "the primary motive" for taking over Drew's case, Tr. 845, 936, and said he explained that motive to the U.S. Attorney. Tr. 732. At the time Holmes took over the case, the U.S. Attorney had concluded that Drew had breached the plea agreement by not cooperating. Tr. 218-21.

On August 26, 1981, Drew was indicted by a state grand jury. Wiley got the message. On September 3, Drew was arraigned in state court and Wiley paid Porter $7,500. Ex. 6; Tr. 848-49.

Even though the U.S. Attorney thought Drew had breached the federal plea agreement, Holmes agreed to a similar plea bargain. Drew pled guilty in state court in January 1982, but sentencing was delayed by court order on five occasions in 1982. The delays were granted both because Drew underwent back surgery and also to ensure Drew's testimony against the pilot of the seized plane, who was then a fugitive. Tr. 851-58, 861-62; Ex. G-6; see Exs. N-1(A), (B), (C), (D), (E). The FBI located the pilot in Florida in October and extradition proceedings began. Tr. 1343-44.

On December 23, 1982, District Attorney Holmes moved in state court to have Drew's case "passed to the files," which tolls the state requirement that sentencing be completed in a reasonable time. Tr. 858-59. At trial, Holmes gave several reasons for his action. The "big motivating thing," he explained, was that the local judge was about to be replaced by a political adversary of Drew's lawyer, Bill Porter (Tr. 754):

> Judge McKenzie was going to be able to have the power to totally ignore any kind of plea bargain we had and go ahead and sentence him

> to the full five years . . . . Bill [Porter] was afraid that's exactly what Dickie was going to do, Judge McKenzie was going to do. So he was fussing about it.

Holmes testified that passing a case to the files is a legally meaningless act, Tr. 924, and the federal prosecutor told the jury "it was a legally absurd, pointless gesture." Tr. 1853. Thirty-three days after Drew's case was passed to the files, the fugitive pilot was first returned to Mississippi and Drew's case was restored to the active docket. Ex. 19; Tr. 755.

### C. Wiley's Blackmail Allegations

At this point, the major witnesses' recollections of key events begin to diverge somewhat. In particular, there is uncertainty over when two conversations occurred.

But there is complete agreement that at some point Wiley complained to Judge Nixon that he was being blackmailed by Bud Holmes (and possibly Carroll Ingram) in connection with Drew's prosecution. Wiley told Nixon "that they [including Holmes] was trying to blackmail me and I wasn't gong to be blackmailed." Tr. 484. Wiley recalled telling Nixon, "if they will go ahead and prosecute Bob Royals [a friend of Drew's], they won't hear a damn word out of me. He's guilty and my son's guilty, but I just don't like them picking on my son because I got money." Tr. 482. Wiley said that Nixon said nothing in response, Tr. 484, and that he never asked Nixon to do anything for him. Tr. 543, 641. Judge Nixon recalled that he was shocked by Wiley's blackmail accusation against his friends, Holmes and Ingram, but resolved not to pursue the matter because the accusation seemed improbable. Tr. 1534-35.

A great deal of effort was expended at trial and after trial to try to pin down the date of this conversation between Judge Nixon and Wiley, and testimony placed the date somewhere between 1981 and 1983. But the precise date of the conversation never was established, and is largely irrelevant to whether Judge Nixon made false statements before the grand jury. Because of the inconclusiveness of the evidence, and because of its limited significance, we address the conflicting testimony in a separate Appendix to this Memorandum. (Appendix B)

### D. The Telephone Call To Wiley From Bud Holmes' Farm

Whenever the conversation between Judge Nixon and Wiley Fairchild occurred, Judge Nixon saw Bud Holmes later that same evening at Holmes' farm outside of Hattiesburg. Holmes testified that Carroll Ingram and Judge Nixon came to his office and Nixon and Holmes then drove out to the farm. Neither Ingram (Tr. 1152) nor the judge (Tr. 1545) confirmed that version of events. Judge Nixon recalled driving himself to Holmes' farm to borrow some Hank Williams records. Holmes agreed that Judge Nixon did come to his farm to borrow Hank Williams records one evening, but did not recall whether that visit occurred on the day that Wiley and Judge Nixon had met. Tr. 917-18.

Although Judge Nixon had not intended to raise with Holmes the blackmailing allegation, he said the subject "was just weighing on my mind" as they chatted over a drink. Tr. 1538.

Judge Nixon recalled, "I said Bud, I've been talking to Wiley Fairchild. And I said he is accusing you of blackmailing him. He said -- I said with reference to the matter[,] some matter with his son." Id.

Holmes responded that Wiley was "paranoid," and offered to tell Judge Nixon about Drew Fairchild's case. Tr. 1539. The judge explained that he did not need to hear about the case, and Holmes replied, "well, the thing's all worked out anyway." Id. While Nixon looked over the phonograph records, Holmes placed some telephone calls. Tr. 1539-40. (It was undisputed -- even by Holmes himself -- that Holmes used the telephone constantly and on the slightest whim. See Tr. 926, 1260, 1350-52.) Holmes then handed the telephone to Judge Nixon and said that Wiley was on the line. The judge recalled that Wiley "didn't sound just right," but Wiley "said I'm glad you mentioned that matter to Bud. He [Wiley] said I'm satisfied." Tr. 1541. Judge Nixon then returned the telephone to Holmes.

Holmes' recollection of that evening was somewhat different. According to Holmes, Judge Nixon said to him, "Bud, I never would have asked you to do anything against your oath of office, never ask you to do anything embarrassing to you, wouldn't ask you to do anything wrong." Tr. 736-38. Holmes continued (id.):

> [Nixon] said, I was out at Mr. Fairchild's and he asked me to put in a good word for his boy, or would I say something to you about Drew. -- I think, I don't think he said Drew, I think

> he said his boy. I said, you know, well, I don't know. I don't know. What is it you want? You want an apology? I don't know. What does the man want?
>
> Q: Are you saying did you say that to Judge Nixon?
>
> A: Yeah, that was about my response. I can't remember this, because as I recall this was like in May of 82, you know, when this occurred. But that was about my response, I mean, I was feeling rich and good-looking and, you know, that would have been my typical type answer.
>
> He said I'm not asking you to do anything, I'm just saying that Mr. Fairchild asked me to put in a good word.
>
> * * * *
>
> So, I took it on myself, said, well, judge, hell, I'm district attorney, I'll pass it to the files. And he said no, I'm not asking you to do that. Now, I'm not asking you to do anything now.

Holmes testified that he told Nixon that he had worked out a plea bargain with Drew. Tr. 739. According to Holmes, Nixon asked if Wiley knew about the plea bargain, and Nixon then telephoned Wiley to tell him about the plea agreement. Id.

Holmes told Wiley on the telephone that "I want Judge Nixon to have credit for helping the boy." Tr. 740. Holmes testified that he was "misleading" Wiley when he made that remark "because I already had the arrangement worked out with Bill Porter." Id. Holmes' Declaration of February 29, 1988 observes that it was not unusual for him, as district attorney, to accord credit to others for influencing a decision when he actually had not been influenced at all by the other person. Ex. N-26 ¶¶ 3, 4.

Holmes claimed that he also told Wiley that he would pass Drew's case to the files, Tr. 740, although Wiley denied that Holmes made that statement. Tr. 663. Holmes admitted at trial that Nixon had not asked him to pass the case to the files. Tr. 739-40. In his Declaration, Holmes explains that he did not think Nixon was asking for any favors for Drew, but was "passing on to me the information that Wiley Fairchild had been asking about his son's case. I would have expected any friend of mine to mention to me that a member of the community had been asking about a case for which I was responsible." Ex. N-26, ¶ 2. Seven months later Drew's case was passed to the files and, according to Holmes, the phone conversation with Wiley was one of the reasons for the action. Tr. 751-52.

### E. Skip Jarvis Starts The Public Integrity Section's Engine

As explained in a separate memorandum that we submit today, the government in 1983 was investigating the Petit Bois Island civil condemnation case which had been decided by Judge Nixon. We do not know the full extent of the connections between that investigation and the Fairchild investigation, but we believe those connections are considerable and suggest that Judge Nixon may have been targeted as part of an investigation designed to retaliate against a federal judge. *See* Memorandum Concerning This Subcommittee's Duty To Investigate Whether Judge Nixon Was Targeted Because Of The Petit Bois Island Case (June 7, 1988).

We do know, however, that the Fairchild investigation was triggered by Robert "Skip" Jarvis, a young man who had married the granddaughter of Wiley Fairchild's sister. Jarvis and Wiley had a complex relationship. Jarvis worked for Fairchild until May 1983, when he was fired for refusing to take a lie detector test. Tr. 304-06. Jarvis claimed that Wiley tried to kill him the following month by tampering with the brakes on the car Jarvis was driving. Tr. 309.

Despite Wiley's supposed homicidal designs on Jarvis, Wiley continued to pay Jarvis $570 a week for 10 months after Jarvis was fired, which allowed Jarvis to finish law school. Tr. 308-09. Jarvis' gratitude took unusual forms. He attempted to persuade members of the Fairchild family to throw Wiley out of the family business, Ex. N-17, and he started a federal investigation of Judge Nixon's investment with Wiley.

On November 3, 1983, Jarvis made an anonymous telephone call to the FBI to allege that Nixon was involved in an illegal financial arrangement with Wiley Fairchild. Tr. 327-28. Jarvis, who had not worked for Fairchild for the preceding six months, also placed anonymous calls to the FBI on November 10 and November 17. Exs. N-5, N-6.

Jarvis told the FBI that Judge Nixon had received an oil investment with Wiley Fairchild in return for Nixon's help in having the federal prosecution of Wiley's son, Drew, transferred to state authorities. As he claimed to the FBI, "the deal with Nixon was to keep it [Drew's case] shut down on the federal level to get it, get the State to handle it. The State has just sat on it." Ex. N-5, p.16; see Ex. N-6, p.21. Jarvis testified that he had been suspicious of the Fairchild-Nixon investment for two years before he finally called the FBI. Tr. 357-66.

Jarvis' allegations ultimately were referred to the Public Integrity Section of the Justice Department in Washington. Attorneys from the Public Integrity Section and FBI agents interviewed several witnesses, including Judge Nixon, in April 1984. A special grand jury was empanelled in Hattiesburg in July 1984. The grand jury was charged with investigating (i) Jarvis' allegations concerning Fairchild and Nixon, and (ii) allegations about the Petit Bois Island trial that previously had been before a grand jury in Tallahassee, Florida.

The critical point about Skip Jarvis is that every major allegation he reported to the FBI turned out to be wrong, including:

| JARVIS' ALLEGATION | TRUTH |
|---|---|
| That the Fairchild-Nixon investment was a payoff to Nixon for steering Drew's case to state court. Tr. 317-18. | Judge Nixon had never heard of Drew's case when Bud Holmes took it over in August 1981, and Holmes took the case over primarily to help Bill Porter collect his legal fee. Indeed, the investment was verbally agreed to months before the marijuana arrests in August 1980. Tr. 593-94, 1036-44, 1053, 1118-19. |
| The deeds for Nixon's investment were backdated to conceal a corrupt deal. Tr. 316-17. | The deeds were backdated to reflect the actual date of agreement, which four different witnesses (including Jarvis) testified is customary in oil transactions. Tr. 1060-61 (Ingram); Tr. 502 (Wiley); Tr. 1405-07 (Massey); Tr. 319 (Jarvis). |
| The promissory notes from Nixon to Fairchild were not prepared until 1982 when Jarvis accused Fairchild of bribing Judge Nixon. Tr. 366-67. | The promissory notes were prepared and executed promptly in February 1981, when the paperwork was completed on the investment, and the notes were sent later to Fairchild's office when Wiley asked for them. Tr. 1065-66. |

Jarvis' suspicions were so unfailingly wrong that in closing argument at trial the prosecutor conceded that Jarvis had no knowledge of wrongdoing by Judge Nixon. Tr. 1837. The disintegration of Jarvis' allegations is significant because it explains much about the investigation. Incited by Jarvis, the Public Integrity Section moved heavily to investigate the case. But as Jarvis' allegations dissolved, the prosecutors were forced to search for ever more implausible crimes. Ultimately they were reduced to combing the transcripts of their own grand jury investigation for supposed perjuries that could be alleged to coerce witnesses into providing incriminating information about Judge Nixon -- a ploy used on three different people. Much of this desperation likely can be attributed to high prosecutorial hopes that were dashed when Jarvis' sensational allegations proved groundless.

### F. The Pre-Grand Jury Investigation: Steering Drew's Case To State Court

The entire focus of the investigation in spring 1984 was Jarvis' claim that Judge Nixon steered Drew's case to state court in return for his investment with Wiley. After he was interviewed by the FBI in April 1984, Wiley told Jarvis in a conversation that Jarvis secretly taped (Ex. 21, p.36):

> They're [The FBI] thinking that NIXON maybe, talked to ah, ah, [U.S. Attorney] George PHILLIPS to get it pulled down here in court. Well, why would I wanna talk to Judge NIXON to, to do that? Why would I want it down here?

Wiley insisted that there was nothing wrong with the investment by Judge Nixon: "that didn't have a damn thing to do with DREW." *Id.* at 12-13, 24.

On the following day, Nixon agreed to a tape-recorded interview with Reid Weingarten of the Public Integrity Section and an FBI agent. After spending more than half of the interview on the oil investment, the prosecutor focused Nixon's attention on the federal role in prosecuting Drew (Ex. 22, pp. 28-29) (emphasis added):

> Prosecutor: Now, the obvious question, Judge, did [Bud Holmes] ever discuss the DREW FAIRCHILD drug case with you?
>
> Nixon: Not to my recollection. I think I would recall it --
>
> * * * *
>
> Prosecutor: I tell you that ah, the airport bust was August, 1980. Ah, that, I tell you that originally the case was a federal case, got passed to HOLMES.
>
> Nixon: How did it get passed, what, what happened?
>
> Prosecutor: Well --
>
> Nixon: I don't know anything about it --
>
> Prosecutor: Frankly, that's --
>
> Nixon: I'm, I'm interested. I'm curious --
>
> Prosecutor: Frankly, that's a very good question, and it's quite a ah, what we're looking at here. . . .

When Nixon asked "exactly what it is alleged that I'm supposed to have done or not done," the prosecutor responded that he had "no information" that "the case was in your court, that you did anything wrong with it." Id. at 42. The prosecutor explained that Drew's co-conspirators were indicted on federal charges, but "DREW FAIRCHILD was never indicted. His case got picked up by HOLMES, as I explained." Id.

The interviewers described Drew's federal plea bargain and the transfer of Drew's case to Holmes. Nixon responded, "Well I'm puzzled. I, I just don't know anything about it. I, I'm, I'm, I'm learning something about it now." Id. at 43. Nixon then asked again about the transfer of Drew's case from federal to state authorities. Id. at 46.

Based on this interview, Judge Nixon, like Wiley, understood that the investigation was about how Drew's case ended up in state court. That understanding was correct. The sole allegations being investigated were that Nixon had been paid off to steer Drew's case from federal to state court. When Judge Nixon testified before the grand jury, he had no reason to believe the focus of the investigation had changed. This understanding caused Judge Nixon to interpret ambiguous questioning to relate to the transfer of Drew's case to state court. That reasonable interpretation by Judge Nixon caused him to give truthful testimony that has earned him a five-year pris term.

G. The July 1984 Grand Jury Session

In July 1984, the grand jury heard testimony from four witnesses who knew of the Nixon-Holmes conversation at Holmes' farm and the telephone call to Wiley: Bud Holmes, Carroll Ingram, Wiley Fairchild, and Judge Nixon. None of those witnesses told the grand jury in July about that conversation or the telephone call from the farm, but only Judge Nixon was indicted for failing to testify about those matters in July.

Nixon voluntarily appeared before the federal grand jury on July 18, and the questioning again focused on the investment with Wiley. When Nixon was asked about the federal proceedings before Judge Harold Cox concerning Drew's co-conspirators, he replied that he knew nothing about those cases. Ex. 23, p.46.

The prosecutor pointed out that Drew was indicted by the state, thereby directing Judge Nixon's attention to how Drew's case ended up in state court. Id. at 45-47. After exploring Judge Nixon's hazy recollection that there was criticism of the state's conduct of Drew's case, the prosecutor asked whether Holmes "ever discuss[ed] the Drew Fairchild case with you"? Id. at 47-48. Judge Nixon responded that he did not recall such a discussion. Id. at 48.

After answering several questions concerning his contact with Wiley or the U.S. Attorney about Drew, Nixon explained that the Justice Department, not a federal judge, determines who is prosecuted "in federal court." Id. at 50-51. Again, the testimony reflected Nixon's understanding that the prosecutor's questions concerned why Drew was not indicted in federal court.

Towards the end of his testimony, Nixon was asked if he had "anything you want to add." Nixon made a lengthy and emotional statement which included two sentences that were the basis for the second perjury conviction.

Finally, Nixon reiterated that he thought the questioning had related to the "handling" of Drew's case in federal court or by federal authorities, since that "would be the only possible charge of a crime herein, federal crime." Id. at 96. Nixon plainly had in mind the federal gratuities statute (18 U.S.C. § 201), which would have been violated only if he had interfered with federal action concerning Drew by steering the federal prosecution to state court.

### H. Wiley's Bad Deal: September-December 1984

Just two months after the grand jury was empanelled, it returned a two-count indictment against Wiley Fairchild. The first count alleged that Wiley had given Judge Nixon an illegal gratuity under 18 U.S.C. § 201(f). The second count charged that Wiley committed perjury when he denied making any effort to conceal that Nixon was the purchaser of the three oil properties. Ex. 25. In a press release, the Department of Justice emphasized that even if Wiley were guilty of paying an illegal gratuity, that did not mean that Judge Nixon was guilty of receiving an illegal gratuity. Ex. N-15:

> The law is clear that the giving and receiving of an unlawful gratuity are separate offenses . . . . The recipient's intent may differ from the donor's intent. The indictment alleges criminal intent on the part of the donor but not on the part of the recipient of the gratuity . . . . this indictment accuses Judge Nixon of no wrongdoing.

The indictment of Wiley Fairchild was completely groundless. On the gratuity charge, as we have seen, Wiley, Carroll Ingram and Judge Nixon all agreed that the investment was a proper business transaction at a fair price that was agreed to verbally in 1980 and set down in writing in early 1981. It had nothing to do with Drew Fairchild or any other case. As the Nixon jury concluded, there was no illegal gratuity.

And, since there was nothing secret about Judge Nixon's investment, the perjury count against Wiley was equally unfounded. Judge Nixon's investment was recorded in the public land records, was reported on Nixon's judicial disclosure report, and royalty checks to Judge Nixon were sent by Fairchild's office beginning in early 1982. Ex. 3, 4, 9, 11, 26. The totally unreliable Skip Jarvis was the only possible witness who would claim that, despite these public actions, Wiley attempted to conceal the Nixon investment. Tr. 340. And Jarvis' testimony on that point would have been just as wrong as his allegations on every other critical part of the case.

But Wiley, over 70 years old, was scared. His lawyer told him he had committed the crime of "selling too cheap," Tr. 705-06, so Wiley cut a deal to plead guilty to the gratuity charge in return for the government's pledge to recommend that he receive no jail time. Wiley explains the decision this way (see Ex. N-24):

> Although I did not believe I had committed a crime -- and even though Judge Nixon's investment had nothing to do with Drew's case -- I pleaded guilty because I was afraid of going to jail and because my lawyer told me that if I was convicted they would put me in handcuffs and then take me straight to jail that instant.

When Wiley went to deal with the prosecutors, he knew that if he could help them against Judge Nixon, he could make a deal with the government. Tr. 690-91. Although it was not disclosed to the court that sentenced Wiley, the prosecutors informed Wiley's lawyer that they would drop the gratuity charge if they became convinced it was unfounded. Ex. N-24; Ex. N-29. This unusual offer was the beginning of an extensive, improper and undisclosed relationship between Wiley and the prosecutors.

Wiley evidently concluded from this experience that grand jury allegations need not be supported before they are made, and immediately put that lesson to work. In December 1984 he was back before the grand jury, delivering allegations of wrongdoing that were so outrageous that Bud Holmes later described them as "a lot of wild statements, just out and out lies." Tr. 774. Wiley's new allegations included the claim that Holmes arranged the death by drowning of Bill Porter (Tr. 775), and that Judge Nixon had taken a $10,000 bribe to reduce the sentence of Billy Shows, a case that the prosecutors then knew had never been before Judge Nixon. Tr. 776.

For the next fourteen months, Wiley and the Public Integrity Section sustained an odd symbiosis in which the prosecutors played skillfully on Wiley's desire for redemption while Wiley desperately tried to ingratiate himself with the prosecutors. In September 1985, while trying to persuade the sentencing judge not to impose any jail time on Wiley, one prosecutor stated that Wiley's cooperation "was the turning point of our investigation," and "It would be hard to overstate the value of Wiley Fairchild's cooperation in this investigation." Ex. N-18, p. 8. Ultimately, Wiley was sentenced to sixty days in prison despite the government's recommendation that he not serve any time in jail. Ex. 38. He served 39 days in a halfway house.

## 1. Carroll Ingram's Deal

### 1. A Credible Witness

A former state legislator, Carroll Ingram had represented his relative Wiley Fairchild in a number of matters other than Judge Nixon's investment. In December 1984, the investigation reached the staff at Ingram's law office. Tr. 1170. Concerned by this turn of events, Ingram travelled twice to Washington, D.C. to meet with the prosecutors and try to resolve his status. Tr. 1171.

Ingram is an important witness. His testimony, unlike the testimony of other government witnesses, is credible and consistent with documentary records. Plainly the government found him credible: out of all the key government witnesses, only Ingram escaped indictment. Consequently, only Ingram among the key government witnesses never fell hostage to the prosecutors' overreaching plea bargains. And, most important, on point after point after point, Ingram corroborates Judge Nixon's testimony or flatly disputes the story told by other government witnesses.

In meeting with the Public Integrity Section, Ingram refused to tailor his testimony to the imaginings of Skip Jarvis or to Wiley's "wild statements and out and out lies." He continued to insist that Judge Nixon's investment had nothing to do with Drew Fairchild's legal problems, that the backdating of the deeds was thoroughly unremarkable, that the promissory notes had been executed in a timely and proper fashion, and that he had neither brought Judge Nixon to see Wiley about Drew's case nor accompanied Judge Nixon to Holmes' office on that day. In short, as the prosecutor conceded, Ingram "gives Judge Nixon very favorable testimony" on the gratuity charge, Count I. Tr. 1870.

Ingram did have a recollection that both Wiley and Judge Nixon had mentioned to him the telephone call from Bud Holmes' farm. Ingram did not have a very specific memory of those conversations, but suggested that they occurred in autumn 1982. He said that Judge Nixon thought Holmes indicated a "positive" result from the conversation, "that Drew Fairchild's case was go[i]ng to be okay." Tr. 1068. Based on that slim recollection, and in view of Ingram's credibility, the prosecutors issued a letter clarifying his status in the investigation as that of a mere "fact witness." Tr. 1171-72. With that reassuring letter in hand, Carroll Ingram went back before the grand jury in February 1985 to testify about the phone call from Bud Holmes' farm.

### 2. Ingram's Nondisclosures -- Virtually Identical To Nixon's -- Were Not Prosecuted As Perjury

We need to underline the contrast between the way Ingram and Judge Nixon were treated by the prosecutors. The prosecutors betrayed no concern over a nondisclosure by Ingram that was virtually identical to the supposed nondisclosure by Judge Nixon that comprised Count III of his indictment.

Ingram was asked during his July grand jury appearance if he had ever discussed the Drew Fairchild narcotics matter with Judge Nixon. Without disclosing that Nixon had told him about the telephone call from Bud Holmes' farm, Ingram told the grand jury that no such discussion had occurred. Tr. 1167.

At trial, Ingram was asked about his failure to disclose the conversation with Nixon in response to that question. Ingram acknowledged that Judge Nixon had "openly mentioned to you that Wiley had asked him to say something to Bud" and that "that related in some way to Drew Fairchild." Tr. 1168. But Ingram insisted that his answer had been entirely truthful, since "I have never had a discussion with Judge Nixon about the Drew Fairchild matter." Id.

The different treatment of Ingram and Judge Nixon on this point highlights just how contrived the prosecution of Jud

Nixon was. Both men were asked in July 1984 if they had had a discussion concerning the Drew Fairchild case. Both men answered no, even though they had had discussions related to Drew Fairchild, because neither had really discussed Drew's case. And neither man disclosed to the grand jury his knowledge of the phone call to Wiley from Bud Holmes' farm.

But Carroll Ingram was given written assurances by the prosecutors that he was only a "fact witness," while Judge Nixon, the "big prize", Tr. 455-56, was indicted for perjury. We do not suggest that Ingram committed perjury. We insist, however, that neither did Judge Nixon.

Most extraordinary is the prosecutor's explanation at trial for the disparate treatment of Ingram and Judge Nixon (Tr. 1969) (emphasis added):

> Why wasn't Carroll Ingram prosecuted when he said he never discussed the Drew Fairchild case with Judge Nixon? Because he hadn't. *Judge Nixon* discussed with *him* the phone call.

If the prosecutor's statement is to be believed, then Ingram's testimony was deemed truthful because *he* had not told *Judge Nixon* about Drew, but rather was more of a listener during the conversation. It is difficult to believe that a five-year prison term can hinge on such empty sophistry. But even under Bud Holmes' disputed version of events, his exchange with Judge Nixon consisted simply of Judge Nixon mentioning Wiley's concern about his son and Holmes' reply that the case had been resolved by a plea bargain. If Ingram did not discuss the case with Judge Nixon, plainly Holmes did not discuss the case with Judge Nixon.

### J. February 1985: Bud Holmes Hits The Panic Button

In January or February of 1985, Bud Holmes learned that the prosecutors knew about the phone call to Wiley from his farm, and he panicked. He visited Ingram's law office and asked if the prosecutors had asked Ingram about the call. When Ingram confirmed that they had, Holmes became very upset. Tr. 1076. Holmes came back a few days later and implored Ingram to search his memory to determine whether he was mistaken. Ingram replied that he could not change his recollection. Tr. 1091-92.

At trial, Holmes told a rambling and often contradictory story to try to blame Judge Nixon for his own concerns about the phone call. Holmes claimed that immediately after being interviewed in April 1984, Judge Nixon supposedly asked Holmes to find out if Wiley had recorded the call. Tr. 758-59. Holmes claimed he asked Ingram about the taping, and he reported back to Judge Nixon a few days later that Wiley did not ordinarily tape calls at his home. Tr. 760-61.

Importantly, Ingram confirms that Holmes was concerned that Wiley might have recorded the phone call, but contradicts the rest of Holmes' story. According to Ingram, Holmes asked about possible taping by Wiley after the July grand jury session, more than three months after Holmes claimed the conversation occurred. Tr. 1085. And Ingram did not believe that Holmes was asking about the telephone call on behalf of anyone else. Tr.

1085-86. Judge Nixon denies asking Holmes to check on taping of the call. Tr. 1574.

Beginning in June 1984, Holmes had pressured the assistant district attorney on Drew's case, Katie Mattison, to take responsibility for the decision to pass Drew's case to the files, even though it had been Holmes' decision to do so. Tr. 1348-56. In February 1985, Holmes visited Ms. Mattison's office and turned up the pressure to have her take responsibility for passing Drew's case to the files, calling her "an ingrate" and becoming "a little abusive." Tr. 1357-58.

Also in February 1985, Holmes came to see Judge Nixon to explain his concern about the telephone call. Tr. 1596. At Holmes' request, they met in the courthouse parking lot while Judge Nixon was waiting for a jury to return from its deliberations. Judge Nixon recalls that Holmes suggested that no telephone call had been made, and that he advised Holmes simply to tell the truth. Tr. 1598-99. At trial, Holmes admitted that he initiated the meeting and suggested they meet in the parking lot, but claimed that it was Judge Nixon who stated that the telephone call did not occur. Tr. 763. Even more confusing, Holmes claimed that two months later Judge Nixon acknowledged to him that the telephone call had occurred. Tr. 765.

Holmes never mentioned the phone call during his grand jury testimony in July and September of 1984. He went back before the grand jury in February 1985, however, and described the telephone call, explaining that when he had testified previously the call "did not come across my mind" and he "didn't put any significance to it." Ex. 31.

K. Bud Holmes' Deal: March-June 1985

A month later, Holmes and his lawyer met with the lead prosecutor, who informed them that Holmes was scheduled for indictment that week. Exs. N-26; Ex. N-27. The prosecutor stated that Holmes "'did not have to be indicted'" if he "would fill in some gaps in [the] investigation." The prosecutor added that Holmes was a "'savvy guy' and would understand what [Weingarten, the prosecutor] meant." Exs. N-26, ¶ 5; N-27, ¶ 2. Both Holmes and his lawyer understood that the prosecutor was offering not to indict Holmes if Holmes could provide incriminating information about Judge Nixon. Exs. N-26, ¶ 6; N-27, ¶ 3. Holmes recalls, "Because I have never know[n] of -- or even heard a rumor of -- any corrupt or dishonest act by Walter Nixon, I could not take the deal that was offered by Weingarten." Ex. N-26, ¶ 6.

Holmes then was indicted on one count of obstruction of justice and four counts of perjury. Only the obstruction of justice charge related to the ultimate charges against Judge Nixon, and alleged that Holmes falsely testified in February 1985 that his previous failure to testify about the telephone call was inadvertent.

Again, we need to contrast the prosecutors' actions toward Judge Nixon with their actions toward others. Holmes -- like Ingram, Wiley and Judge Nixon -- knew about the telephone call when he testified in July 1984. Like the other three, he did not describe the telephone call to the grand jury. Like Ingram and Wiley, Holmes was not indicted for perjury for failing to mention the telephone call in July 1984. Only Judge Nixon was indicted for that dire offense.

During jury selection at Holmes' trial in June 1985, plea negotiations began. The government agreed to drop all felony charges against Holmes in return for a plea to a contempt charge, with a recommendation of no more than a year in jail. Ex. 33. At the sentencing, the prosecutor urged that Holmes be sentenced to a $10,000 fine and a year in prison, and the court did so. But the statute provides for either a fine or imprisonment. 18 U.S.C. § 401. Holmes immediately paid the fine and argued that the sentence of imprisonment was illegal. The Fifth Circuit Court of Appeals agreed with Holmes and voided the prison term. United States v. Holmes, 822 F.2d 481 (5th Cir. 1987).

Holmes recalls that after he entered the plea agreement, the prosecutor "stated to me that he doubted he could have convicted me on several of the counts of the indictment against me." Ex. N-26, ¶ 7. The Public Integrity Section prosecutor has signed an affidavit stating the converse of Holmes' assertion, that he told Holmes "that if he had gone to trial a jury probably would have convicted him of two or possibly three of the five counts in his indictment." Ex. N-30, ¶ 7.

### L. The Public Integrity Section Saves Drew Fairchild From A Long State Prison Sentence: March-July 1985

Ironically, by early 1985 Drew Fairchild still had not been sentenced in state court and there were reports that Drew's plea bargain might fall apart. The Public Integrity Section lawyer, Weingarten, promised Wiley he would help Drew. Exs. N-25, ¶ 5; N-24, ¶ 2. Weingarten wrote a letter on Drew's behalf to Bud Holmes' successor as District Attorney, Glenn White, to try to save the no-prison plea bargain negotiated by Bud Holmes detailing Drew's cooperation with the federal investigation. Ex. N-3. See Ex. N-25, ¶ 7, Ex. 34, pp. 81-82, 84-85.

But Judge McKenzie of the Forrest County Circuit Court announced that he would not accept that plea agreement and would sentence Drew to five years in prison. Drew's lawyers and Weingarten then adopted an alternative plan to help Drew. Drew's lawyer asked the Public Integrity Section to prosecute Drew on federal charges to head off the state case. Tr. 128. The federal prosecutor adopted this proposal, and indicted Drew on parallel federal charges after Drew's lawyers got the state plea agreement thrown out by Judge McKenzie. Exs. N-25, ¶ 6; N-4; 30; 32.

Drew's lawyers then moved to have the state charge thrown out on the ground that prosecution was barred due to the pendency of the federal charges. Ex. N-1(K). After that motion was denied, Ex. N-1(O), Drew's lawyers sought to have the state court accept any federal sentence as full satisfaction of any state sentence. This proposal was successful. Ex. 34. Drew was sentenced to three years in prison by the Mississippi court, but three days later was sentenced to only six months by the federal court. He served a total of four and one-half months in prison. Tr. 124-25.

There are three main points about this extraordinary episode.

*First*, the Public Integrity Section acted to protect Drew after promising Wiley it would do so, and then never disclosed to Judge Nixon's lawyers that such a promise had been made and fulfilled. Disclosure of that promise was required by a pretrial order because the promise went directly to Wiley's credibility and his relationship with the Public Integrity Section. Ex. N-21.

The lead prosecutor has acknowledged the basic events of this sequence while attempting to draw some extremely thin distinctions. He has claimed ambiguously that he brought federal charges against Drew because "the drug case was a federal matter that could *best* *and* *most* *fairly* be handled in Federal Court." Ex. N-4 (emphasis added). Similarly, the prosecutor claims (Ex. N-30, ¶ 5) (emphasis added):

> I *never* represented to Wiley Fairchild that I would do anything with regard to his son, Drew Fairchild, *except* to attempt to see to it that he was treated *fairly* by the Government. *I did advise Fairchild's lawyers and Drew Fairchild that I would seek to make sure that he was not punished by the State of Mississippi for his cooperation with the*

> *United States. None of this was in the form of a promise to Fairchild as part of a plea bargain or in return for his testimony. It was merely a statement of fact as to my intentions in regard to the treatment of another witness in the case.*

To paraphrase Gertrude Stein, a promise is a promise is a promise. The prosecutor promised Wiley to help Drew, kept that promise, and then wrongly concealed it.

*Second*, because the prosecutors concealed their promise to Wiley to help Drew, the Public Integrity Section presented incomplete and misleading testimony at trial. On direct examination, Drew said that no promises had been made to him "with respect to that [federal] indictment," even though Weingarten had promised Wiley to help Drew. Tr. 123. On cross-examination, defense counsel brought out that the federal indictment had been initiated by Drew's lawyers to try to head off the state prison sentence, Tr. 126-30, but on redirect, a prosecutor attempted to "clarify" the suggestion by defense counsel "that the federal government had something to do with this deal of Judge McKenzie." Tr. 202. The prosecutor then asked Drew (Tr. 204):

> Q: In fact at your sentencing before Judge Carr did the federal government recommend that you not go to prison?
>
> A: No, just the opposite.
>
> Q: And that was Mr. Weingarten, was it not?
>
> A: Mr. Weingarten.

At Drew's sentencing, however, Weingarten called Drew a "nice man" whose cooperation had been "complete." And Weingarten made no direct recommendation that Drew receive any time in prison. See Ex. 36. Drew's inaccurate testimony at the Nixon trial was compounded when the prosecutor asked, "Has the federal government cut you any breaks in this investigation?" Drew replied, unbelievably, "No." Tr. 202 (emphasis added).

Everything the Public Integrity Section did with respect to Drew Fairchild in 1985 was designed to "cut" him "breaks." First the Public Integrity Section tried to save the no-prison deal in state court; then it stepped in to shield Drew from the lengthy state prison sentence threatened by Judge McKenzie; and then it effectively sponsored Drew at his sentencing.

Third, there is a terrible irony here. Judge Nixon was convicted for denying any attempt to influence Bud Holmes about Drew's case, even though Holmes himself denies that Nixon attempted to influence him. Yet the prosecutors who secured Nixon's conviction did influence Drew's case to ensure more lenient treatment, and then secured Nixon's conviction by eliciting Drew's misleading and inaccurate testimony denying that they had helped him. Who presented the truth? The prosecutors who deceived the jury about their role in protecting Drew? Or Judge Nixon who accurately denied influencing Bud Holmes to help Drew?

## M. The Public Integrity Section's Domination Of Wiley Fairchild: November 1984-February 1986

As already noted, the Public Integrity Section developed an inappropriate and undisclosed relationship with Wiley Fairchild. By a series of promises, winks, and nods, the Public Integrity Section achieved a significant measure of undisclosed domination over this admittedly scared 70-year-old man. Ex. N-24, ¶ 3. Among the elements of that domination were:

(i) The statement by the lead federal prosecutor, at the time of the plea agreement, that he would drop the gratuity charge against Wiley if he became convinced that there was no connection between the oil investment and the drug prosecution of Drew Fairchild. Weingarten refused to include that promise in the written plea agreement. See Exs. N-25, ¶ 4; N-29, ¶¶ 2, 3.

(ii) The Public Integrity Section's promise to help Wiley's son, Drew, and the fulfillment of that promise by bringing a federal prosecution in order to head off the threatened state prison term. See pp. 34-37, supra.

(iii) Weingarten told Wiley's lawyer what Wiley should say at his sentencing, and Wiley was "afraid not to say in Court what Mr. Weingarten said I should say." Ex. N-24, ¶ 4.

(iv) Before the Nixon trial began, John Baltar, who worked for Wiley Fairchild and was acting with Wiley's approval, provided the prosecutors with the results of a survey of potential jurors that had been compiled for Wiley's defense. Baltar, with Wiley's approval, also helped Weingarten gather background information on potential jurors immediately before the Nixon trial began. Ex. N-25, ¶¶ 8-10.

(v) During the trial, Weingarten came to Wiley's office to prepare Wiley's testimony. At the prosecutor's request and by copying from the prosecutor's notes, Baltar wrote out a list of questions and answers which were jointly developed at that meeting for Wiley Fairchild's testimony. See Ex. N-25, Attachment 1. The prosecutor asked Wiley to study this "script," and Wiley did so, and even was reviewing the script as he waited outside the courtroom to testify in the Nixon trial. Id., ¶ 11. The prosecutor has confirmed many of these facts, but denies that he actually reviewed the "script" written out by Baltar. See Ex. N-30, ¶ 10.

(vi) In view of these events, Wiley formed the justifiable impression that if the Public Integrity Section was satisfied with Wiley's trial testimony, the prosecutor "would do everything he could to help me, including assisting in getting a pardon." Ex. N-24, ¶ 6. Similarly, Wiley believed that if his trial testimony did not please the prosecutor, "he would not help me." Id. Based upon that belief, Wiley asked Baltar to call the Public Integrity Section after the Nixon trial ended and request assistance in getting an executive pardon for Wiley. The prosecutor replied to Baltar that he would be willing to help Wiley in any way he could, but not until the Judge Nixon case was completely concluded. Ex. N-25, ¶ 12.

All of these elements were concealed from Judge Nixon and his counsel. There can be no dispute concerning the significance of Wiley's testimony at trial. Only three witnesses could testify directly about the central events in the case, Nixon, Holmes, and Wiley. Any increased doubt about Wiley's credibility -- and, perhaps equally important, the credibility of the prosecutors -- likely would have changed the jury verdicts on Counts III and IV, especially in view of both (i) the possibility that the jury returned a compromise verdict and (ii) the weakness of the government's proof.

These nondisclosures are particularly disturbing because the prosecutor stressed repeatedly in his closing argument that the jury should believe Wiley's testimony because he supposedly had no remaining incentive to assist the government. (Tr. 1850; 1967) (emphasis added):

> Wiley Fairchild never moved off that point. What's it to him at this point in time? There is no hook into Wiley Fairchild, he's not being prosecuted for anything at this point. Was it not simply an effort by this man to give his best testimony? If you believe that, if you believe Wiley Fairchild on that point, a crucial point we submit, it puts the lie to Judge Nixon's testimony.
>
> . . . .
>
> What hammer does the United States have over Wiley Fairchild at this time? We gave that lever up. We could have deferred that sentence. We could have kept him unsentenced until he testified.
>
> Was Bud Holmes sentenced? Yeah, Bud Holmes was sentenced. What leverage did the United States have over Bud Holmes. I'll tell you what leverage we had, we have the leverage every prosecuting attorney has for perjury. The same with Wiley Fairchild. But that's the only leverage. We gave up the leverage. We had no leverage . . . .

As the prosecutor spoke those passionate words to the jury, Wiley Fairchild was patiently waiting to ask the prosecutor to make good on his promise of help, secure in the knowledge that the prosecutor already had made good on his earlier promise to help Drew. But Judge Nixon, the trial court and the jury knew nothing about those promises or that considerable leverage that the government still held over Wiley Fairchild.

Under Brady v. Maryland, 373 U.S. 83 (1963), Judge Nixon had a due process right to evidence favorable to his defense, and that includes impeachment evidence as well as exculpatory evidence. United States v. Bagley, 105 S.Ct. 3375, 3380 (1985). Defense counsel made a specific request for all evidence of government promises or assistance to witnesses, and disclosure of that material was ordered by the trial court. Ex. N-21. That order was flouted not only by noncompliance, but also through a closing argument that sought positive advantage from the Public Integrity Section's concealment of impeaching evidence.

### N. The Public Integrity Section Attempts To Bulldoze John Stocks And Eugene Lewis: Fall 1985

We submit a separate memorandum today detailing our concerns about the role of the Petit Bois Island matter in the investigation of Judge Nixon. At this point, however, we note only that the two most prominent principals in that case -- John Stocks and Eugene Lewis -- both were told by the Public Integrity Section that they would be indicted unless they provided incriminating evidence against Judge Nixon. Exs. N-35, N-36, N-37, N-38. When neither could provide such incriminating information, they were each indicted for perjury and obstruction of justice. Both Stocks and Lewis were acquitted following a jury trial in the Northern District of Alabama in June 1986.

## II.

## JUDGE NIXON COMMITTED NEITHER CRIMES NOR "HIGH CRIMES AND MISDEMEANORS"

By the time Judge Nixon's case came to trial, the charges had shrunk dramatically from Skip Jarvis' sensational allegations. What was left was a gratuity charge that even the prosecutors did not believe, and three contrived perjury charges. None of those allegations provides a basis for impeachment.

### A. The Public Integrity Section Totally Failed To Prove Counts I and II, On Which Judge Nixon Was Acquitted

#### 1. Count I: No Illegal Gratuity

Count I of the indictment charged Judge Nixon with receiving an illegal gratuity, but no evidence of that offense ever was presented. The backdating of the documents was undertaken only to ensure that they corresponded to the actual date of the verbal agreement. Tr. 602, 1047-51. The investment was never concealed, and Judge Nixon reported it properly on the annual Judicial Disclosure form. And the investment had nothing to do, ever, with Drew's case.

Even more fundamental, no proof demonstrated that Judge Nixon ever had any impact on any "official act" with respect to the Drew Fairchild case, which is required to prove a violation of 18 U.S.C. § 201. Under that statute, the recipient of the gratuity must intend to be influenced in performance of an "official act," which is defined as "any decision or action on any question . . . which may at any time be pending, or which may by law be brought before any *public* *official*." And "public official" is defined as a *federal* official.

Even if Bud Holmes had been influenced in some way by the passing exchange at the farm with Judge Nixon, Holmes as a state official could not take an "official act" under the gratuity statute. Because no proof at trial established any official act that Judge Nixon could have influenced, Count I was a nullity at its inception. Indeed, the jury was instructed that "nothing which was said or done with respect to the state criminal prosecution of Drew Fairchild would constitute the 'official act' underlying the federal offense of receiving an illegal gratuity." Tr. 2090.

Indeed, the prosecutor himself has expressed considerable skepticism about Count I. He admitted in closing argument that Carroll Ingram's testimony "helps Judge Nixon on Count I." Tr. 1870. A newspaper reporter testified at a post-trial hearing that during the trial the prosecutor said the gratuity charge was "a tough -- a tight call, but it would be tough for him to walk away from it, and that it served as the backdrop for the perjury charge." New Trial Tr. 458. Another reporter who covered the trial has written that the prosecutor "*even told reporters that he did not expect the first count of the indictment* -- [the gratuity count] -- *would stick*, and that it was that count that provided the backdrop for the entire case." National Law Journal, Apr. 4, 1988, p. 25 (emphasis added). The prosecutor himself has testified that he "never badmouthed the gratuity count like that. *I certainly bad mouthed* the evidence as it was going in." Post Trial Tr. 379 (emphasis added).

The Public Integrity Section had to know that it could not prove Count I. Not only did Wiley, Ingram and Judge Nixon all vouch for the propriety of the investment, but also the prosecutors could not identify an "official act" by a federal official that Judge Nixon might have influenced for Wiley Fairchild. But the Public Integrity Section kept Count I in the case to secure tactical advantages: a broader range of admissible evidence, an apparent veneer of corruption that might provide a motive for the alleged false statements, and the hope that the jury would return a compromise verdict. Such prosecutorial tactics are totally improper when the actual charge cannot be proved. Count I should never have been brought.

### 2. Count II: Judge Nixon Truthfully Denied Discussing Drew's Case With Wiley

Count II alleged that Judge Nixon falsely denied both (i) discussing Drew's case with Wiley Fairchild and (ii) that Wiley ever asked him to do something concerning Drew's case. Wiley testified that his conversation with Judge Nixon concerned only his suspicions that Holmes and Ingram were trying to blackmail him. Tr. 484, 640. So did Judge Nixon. Tr. 1535. No wonder the jury acquitted on that count.

### B. Count III: Bud Holmes Did Not Discuss Drew's Case With Judge Nixon

Count III concerned Judge Nixon's denial that Bud Holmes had discussed "Drew Fairchild's case" with him. This charge provides no basis for impeachment despite the jury's verdict.

*First*, Judge Nixon's testimony was true. *Second*, even if the prosecutor's question were construed to be so ambiguous as to raise a question concerning the literal truthfulness of the testimony, a perjury charge cannot be based on a response to such an ambiguous question.

### 1. *The Testimony Was True*

Only three witnesses had any firsthand knowledge of the events of the day when Judge Nixon visited Bud Holmes' farm outside Hattiesburg. Two of those witnesses -- Wiley Fairchild and Judge Nixon -- agree on the substance of the conversations that occurred. Bud Holmes' version of the day is somewhat different, but still does not establish that Judge Nixon's testimony was false.

*Wiley and Judge Nixon* -- Wiley testified that he complained to Judge Nixon that Holmes and Carroll Ingram were blackmailing him. Tr. 484. He said that he did not ask the judge to do anything about Drew, Tr. 641, and the judge did not really comment on the blackmail allegations. Tr. 484. Wiley also recalled that in the telephone conversation later that night, Judge Nixon told him simply, "you know that man we was talking to this evening? . . . I'm in his home, and everything going to be taken care of to your satisfaction." Tr. 485. The plain import of these remarks was that the blackmailing suspicions had been resolved as groundless.

Judge Nixon's testimony, though diverging on certain details, agrees with the substance of Wiley's testimony: Wiley complained to him about Holmes' blackmail; Wiley did not ask him to do anything; and their telephone conversation that night involved only a brief exchange to the effect that the matter they had discussed earlier in the day had been resolved. Tr. 1539-41, 1587. Nothing in the testimony of Wiley or Judge Nixon contradicts Judge Nixon's grand jury testimony that Holmes did not discuss Drew's case with Judge Nixon.

Bud Holmes -- According to Holmes, his exchange with Nixon included three elements: (i) Judge Nixon's statement that Wiley had asked the judge to put in a good word for Drew; (ii) Holmes' response that Drew had a plea bargain that would be implemented; and (iii) Holmes' suggestion that he might pass Drew's case to the files and Nixon's reply that he was not asking Holmes to do anything. Holmes also claimed that he told Wiley over the telephone that Drew's case would be passed to the files, Tr. 740, but Wiley denied that Holmes made that statement, Tr. 663. Holmes also testified that Judge Nixon seized the occasion of the phone call to thank Wiley for the investment opportunity (Tr. 740), a testimonial curlicue that is both totally implausible and totally uncorroborated by Wiley or Judge Nixon.

As described by Holmes, the exchange with Judge Nixon was neither lengthy nor specific. Even if Holmes is right about the substance of the exchange, and even if Judge Nixon and Wiley are wrong, Bud Holmes still did not discuss Drew's case with Judge Nixon. According to Holmes, the judge passed on Wiley's concern over his son, and Holmes said the case had been settled. They did not discuss the facts of the case, the legal issues, the options available or the personalities of the participants. It was, to use Carroll Ingram's description of his exchange with Judge Nixon on the same matter, "a passing comment, an understated thing that wasn't a full discussion about it." Tr. 1070. Even Bud Holmes agreed that he did not discuss Drew's case with Judge Nixon, Tr. 947, then qualified his answer slightly by adding "outside of what I've testified to." Tr. 948. It surely was not a false statement for Nixon to deny any recollection that Holmes had discussed Drew's case with him.

### 2. The Questioning Was Too Ambiguous To Support A Perjury Charge

Even if Judge Nixon's answer in Count III could be considered inaccurate, the questioning itself was too ambiguous to establish an intentional false statement. In Bronston v. United States, 409 U.S. 352 (1973), the Supreme Court held that a perjury conviction cannot be based upon misleading testimony that is literally true. The Court ruled that "[p]recise questioning is imperative," holding that "A jury should not be permitted to engage in conjecture whether an unresponsive answer, true and complete on its face, was intended to mislead or divert the examiner." Id. at 362, 359.

Bronston noted several reasons for subjecting perjury charges to exacting standards. First, witnesses under oath are nervous and prone to testimonial mistakes that should not create criminal liability (id. at 358):

> Under the pressures and tensions of interrogation, it is not uncommon for the most earnest witnesses to give answers that are not entirely responsive. Sometimes the witness does not understand the question, or may in an excess of caution or apprehension read too much or too little into it.

Second, in an adversarial setting the questioner bears primary responsibility for eliciting precise and responsive testimony (id. at 358-59): "It is the responsibility of the lawyer to probe; testimonial interrogation, and cross-examination in particular, is a probing, prying, pressing form of inquiry. If a witness evades, it is the lawyer's responsibility to recognize the evasion and to bring the witness back to the mark, to flush out the whole truth with the tools of adversary examination."

Third, the jury should not speculate as to whether the witness intended to mislead the questioner. "A jury should not be permitted to engage in conjecture whether an unresponsive answer, true and complete on its face, was intended to mislead or divert the examiner." Id. at 359. Any other approach would "inject a new and confusing element," leaving witnesses "unsure of the extent of their responsibility for the misunderstandings and inadequacies of examiners" and vulnerable to liability for "'perjury by implication.'" Id. at 359.

Fourth, perjury prosecutions are "not the sole, or even the primary, safeguard against errant testimony." Id. at 360. Rather, adversarial questioning is the central device for finding the truth. Loose application of the perjury statute could deter witnesses from coming forward. Id. at 359-60. Cf. Weiler v. United States, 323 U.S. 606, 609 (1945). (In fact, the prosecutor in this case has predicted that Judge Nixon's case will make Mississippians less willing to cooperate with grand juries. Ex. N-22.)

In Bronston, the defendant argued that because "the key question was imprecise and suggestive of various interpretations," his testimony was truthful under a reasonable understanding of the question. The Court observed that "the problem of the ambiguity of the question is not free from doubt, but we need not reach that issue." 409 U.S. at 356.

The lower courts have divided sharply on the "problem of the ambiguity of the question" that was not decided in Bronston. Five circuits -- covering 26 states -- and at least two state supreme courts have ruled that perjury charges based on ambiguous questions must be dismissed by the Court.[2] Such ambiguous questions ordinarily concern simple words like "Drew Fairchild's case."[3] Three circuits and two state appellate courts agree with the Fifth Circuit, where Judge Nixon's case was decided, that juries may decide perjury charges even when the question was ambiguous. [4]

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[2] United States v. Lighte, 782 F.2d 367, 376 (2d Cir. 1986) (limited to "fundamentally" ambiguous questions); United States v. Ryan, 828 F.2d 1010, 1015 (3d Cir. 1987) (same); United States v. Slawik, 548 F.2d 75, 84-85 (3d Cir. 1977); United States v. Eddy, 737 F.2d 564, 570-71 (6th Cir. 1984); United States v. Sainz, 772 F.2d 559, 562-564 (9th Cir. 1985) ("witness cannot be forced to guess at the meaning of the question to which he must respond upon peril of perjury"); United States v. Larranaga, 787 F.2d 489, 497 & n.2 (10th Cir. 1986); People v. Wills, 71 Ill. 2d 138, 147 (1978); State v. Browne, 43 N.J. 321, 204 A.2d 346 (1964).

[3] Perjury convictions have been reversed because questions (Cont'd)

Count III squarely presents the "problem of the ambiguity of the question." Throughout the April 1984 interview and his grand jury testimony, Judge Nixon plainly understood the questioning to concern the federal handling of Drew's case, which was "the only possible charge of a crime herein, a federal crime." Ex. 23, p. 96. Judge Nixon confirmed that point in his Declaration of March 4, 1988, which was submitted with our Motion for Reduction of Sentence. Ex. 47. As the trial court instructed the jury, "nothing which was said or done with respect to the state criminal prosecution of Drew Fairchild would constitute the 'official act' underlying the federal offense of receiving an illegal gratuity . . . ." Tr. 2090.

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contained simple but ambiguous terms like "stuff," *United States v. Finucan*, 706 F.2d 838 (1st Cir. 1983); "procedure," *Sainz*, *supra*; "handle," *United States v. Tonelli*, 577 F.2d 194 (3d Cir. 1978); "have," *United States v. Cowley*, 720 F.2d 1037, 1043 (9th Cir. 1983), *cert. denied sub nom St. Clair v. United States*, 465 U.S. 1029 (1984); "vouch," *People v. Blumenthal*, 55 A.D.2d 13, 389 N.Y.S. 2d 579 (1976); "run," *State v. Cousins*, 4 Ariz. App. 318, 420 P.2d 185 (1966); and "notebook," *United States v. Razzaia*, 370 F.Supp. 577 (D. Conn. 1973).

[4] *United States v. Chapin*, 515 F.2d 1274, 1280 (D.C. Cir.), *cert. denied*, 423 U.S. 1015 (1975); *United States v. Finucan*, 706 F.2d 838, 848 (1st Cir. 1983); *United States v. Bell*, 623 F.2d 1132, 1136 (5th Cir. 1980); *United States v. Williams*, 552 F.2d 226, 229 (8th Cir. 1977); *People v. Hoag*, 89 Mich. App. 611, 281 N.W. 2d 137, 140-41 (1979); *State v. Douglas*, 217 Neb. 199, 216, 349 N.W. 2d 870, 882 (1984).

Consequently, when Judge Nixon was asked if Holmes had discussed "Drew Fairchild's case" with him, Judge Nixon reasonably understood the question to address whether Judge Nixon had discussed with Holmes how the federal case ended up in state hands. Judge Nixon told the grand jury that the federal courts have no involvement in state prosecutions, and then added that federal courts also have no involvement in federal prosecutorial decisions. Ex. 23, pp. 48-49, 51. The entire sequence of testimony reflects Nixon's understanding -- first established by the prosecutor's own statements in the April interview -- that the prosecutor was asking about how "Drew Fairchild's case" "got passed" from federal to state authorities. A testimonial misstep caused by misunderstanding the question cannot be the basis for impeachment.

C. Count IV: Judge Nixon's Testimony Was Truthful

As cited in Count IV of the indictment, Judge Nixon's testimony was true. Nixon testified first, "I have had nothing whatsoever officially or unofficially to do with the Drew Fairchild criminal case in federal court or state court." Ex. 23, p. 76 (emphasis added). The last phrase -- "in federal court or state court" -- modifies the entire statement, and it is indisputable that Nixon played no role in Drew's case "in" any court. He was not counsel, prosecutor, judge, witness, informant, spectator, or involved in any other capacity. The statement is true.

Nixon then testified (id.):

> I never handled any aspect of this case in federal court. As you said, Judge Cox handled it. I don't know where -- someone told me maybe Judge Russell handled one of the other defendants also and -- but I never handled any part of it, never had a thing to do with it at all . . . .

This testimony accurately states that Nixon never handled the Drew Fairchild case in federal court, "never had a thing to do with it at all." Perhaps Judge Cox or Judge Russell handled the case in federal court, but Nixon stated that he did not. The statement is true.

Judge Nixon testified further (id. at 76-77):

> . . . and [I] never talked to anyone, state or federal, prosecutor or judge, in any way [to] influence anybody with respect to this case.

Again, the statement is true. Wiley testified that he did not ask Judge Nixon to do anything, and that he never discussed with the judge the passing of Drew's case to the files. Tr. 640, 662-63. Similarly, Bud Holmes' Declaration of February 29, 1988 makes clear that he did not understand Judge Nixon to be attempting to influence him when they spoke at Holmes' farm, and that Judge Nixon did not influence him (Ex. N-26):

> Nixon mentioned in passing that Wiley Fairchild had asked Nixon to put in a good word for Wiley's son, Drew, who was awaiting sentencing on a guilty plea he had entered to an indictment by my office.

> Nixon made absolutely clear to me that he was not seeking any preferential treatment or special favors for Drew Fairchild. I understood that Nixon simply was passing on to me the information that Wiley Fairchild had been asking about his son's case. I would have expected any friend of mine to mention to me that a member of the community had been asking about a case for which I was responsible.
>
> I was not influenced in any way in my handling of the Drew Fairchild matter by this brief exchange with Nixon. My office took no action -- nor failed to take any action -- with respect to the Drew Fairchild matter because of that brief exchange I had with Nixon.

Every statement attributed to Judge Nixon by Holmes was to the effect that Nixon was not trying to influence Holmes. Indeed, Holmes said that Judge Nixon told Holmes that he was not asking Holmes to do anything at all. Tr. 739-40. Judge Nixon's testimony was literally and completely true.

### D. Carroll Ingram's Testimony Does Not Establish Any False Statement By Judge Nixon

As noted above, Carroll Ingram picked up in conversation references from Wiley and Judge Nixon about the exchange between Holmes and Judge Nixon. In his closing argument, the prosecutor dramatically -- and bewilderingly -- announced to the jury that Carroll Ingram "buries Judge Nixon on the perjury count." Tr. 1870. This inaccurate proclamation apparently was based on two points.

First, the prosecutor argued that Ingram supported the conclusion that the phone call occurred before Drew's case was sent to the files. Tr. 1869. But the dating of the phone call (even if it were firmly established) is not material to the perjury counts. The issue in Count III is whether Holmes discussed Drew's case with Judge Nixon, not when any discussion occurred. The issue in Count IV is whether Judge Nixon attempted to influence any official concerning Drew's case, not when the attempt occurred. Even Bud Holmes, who basically places the phone call in 1982, denies that Judge Nixon attempted to influence him.

Second, the prosecutor argued that Ingram established that "Judge Nixon directly from his own mouth told him *that he had contact with the Drew Fairchild case* through Bud Holmes and that he reported his contact back to Wiley Fairchild." Tr. 1869 (emphasis added). Again, the prosecutor's argument is beside the point. Ingram's testimony did not establish that Holmes discussed Drew's case with Judge Nixon, nor that Judge Nixon attempted to influence the case. Ingram recalled only that Holmes had given a "positive feeling" that Drew's case would "be okay." That information is entirely consistent the testimony of Wiley and Judge Nixon that the substance of the conversations that day was Holmes' blackmailing over Drew's case.

The prosecutor's attempt to rely on Ingram for the perjury counts reflects the weakness of the prosecution's proof and the distortion of reality that was achieved in this case. Nothing in Ingram's testimony establishes that Judge Nixon's testimony was false.

## CONCLUSION

For all of these reasons, there is no basis for impeachment of Judge Nixon, and we urge this Subcommittee to recommend against approval of House Resolution 407.

Respectfully submitted,

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# DATING THE NIXON-FAIRCHILD "BLACKMAIL" CONVERSATION AND THE VISIT TO HOLMES' FARM

Wiley Fairchild had great difficulty determining when he told Judge Nixon he was being blackmailed by Bud Holmes and Carroll Ingram. He testified that the conversation occurred shortly after Bob Royals had reported to him that Bill Porter had said that "if Drew will get up off his money he'd come clear of this thing," and that, "if [Drew's] old man had knew his son got his tail in the crack, he'd get up off his money." Tr. 480, 626. As the prosecutor conceded at trial, that conversation between Royals and Wiley probably occurred before Drew's state court indictment in August 1981. Tr. 2029. Defense counsel represented that Royals himself, who was then in prison for his role in the smuggling venture, would confirm that time frame for the conversation. But Royals invoked his Fifth Amendment rights unless he was granted immunity. Tr. 668-69. Because the prosecutor would not seek such immunity for Royals, and since the Court was unwilling to order immunity sua sponte, Royals never did testify. Tr. 2032-35.

But Wiley also testified that the conversation with Judge Nixon occurred after a flurry of publicity about Drew's case, Tr. 483, specifically the publicity that followed the passing of Drew's case to the files in December 1982. Ex. 20. Based on that recollection, he then placed the conversation with Judge Nixon in early 1983, or about 18 months after the conversation with Bob Royals. Tr. 638-41, 655. That testimony agreed entirely with Judge Nixon's recollection that the conversation occurred in early 1983, around the time he paid off the promissory notes to Wiley and the judge's wife had periodontal surgery. Tr. 1526-31.

Wiley then reversed himself on the witness stand and announced that the conversation must have occurred before Drew's case was passed to the files (or December 1982). Tr. 660. This third version is not consistent with the record of local publicity about Drew's case, which does not begin until January 1983. Ex. 20.

Wiley's third version of the dating accorded roughly with the recollection of Bud Holmes, who said he learned of the conversation on the same day that Nixon picked up some turkeys from him. Tr. 668-70. Holmes said that he placed the conversation in the spring because that is when turkey-hunting season occurs. Holmes also said that he thought the conversation occurred before he sent Drew's case to the files, and that (although he could not be certain) he thought the date was May 14, 1982. Tr. 750.

Holmes selected May 14, 1982 because his office calendar showed a reference to Judge Nixon on April 13, 1982, and Holmes believed the calendar entry was one day off. Tr. 750, 895. Holmes added that May 14, 1982 made sense to him because he remembered a particular wedding that occurred the next day, as well as a hair-pulling altercation between his girlfriend and his secretary on the night before the wedding. But Holmes also told the grand jury in February 1985 that the conversation could have occurred in spring 1983, or after Drew's case had been passed to the files and had been called back. Tr. 868-70. He even admitted at trial that the phone call could have happened in 1983. Tr. 901.

Judge Nixon testified that he believed the meeting with Wiley occurred in early 1983. Tr. 1528-31. Judge Nixon used court records as the basis for his belief that he was in Biloxi on May 14, 1982, the day on which Holmes suggested the meeting occurred. On the morning of May 14, Judge Nixon heard motions in a pending trial. He said that he thought he stayed at the courthouse in Biloxi the rest of the day to prepare for trial on Monday and that he had not been in Hattiesburg. Tr. 1548-57. Judge Nixon conceded that he had on occasion commuted to Hattiesburg and back in one day for a dentist's or doctor's appointment. Tr. 1768.

Wiley's recollection of the circumstances of his conversation with Judge Nixon was contradicted in other respects. He said he sent for Judge Nixon through Carroll Ingram, and claimed that Ingram brought Nixon to his office. Tr. 646. Ingram denied being present at such a meeting, Tr. 1152, and Judge Nixon also did not recall Ingram being present. Tr. 1532.

Another contradiction concerned Holmes' testimony that after Judge Nixon and Wiley spoke at Wiley's office, Ingram and

Judge Nixon came to Holmes' office. Tr. 735-36. Ingram denied that he was in Holmes' office with Judge Nixon, Tr. 1152, as did Judge Nixon, Tr. 1545.

At a post-trial hearing, the struggle over the date continued. The Public Integrity Section revealed for the first time at that hearing that it had dental records indicating that Judge Nixon had been in Hattiesburg in the afternoon of May 14, 1982 for treatment by Dr. Bennett York. Post-Trial Tr. 399-402. The records indicate that Dr. York constructed a bruxism splint for the judge to treat a serious pain problem.

Surprisingly, the government had acquired those dental records long before trial, but had never made them available to the defense. Defense counsel objected to the failure to produce the records in time for Judge Nixon to refresh his recollection for trial testimony. Post-Trial Tr. 546-48. The government surely knew that Holmes would claim that the phone call occurred on May 14, and that records placing Judge Nixon in Hattiesburg on that day would clearly be "material" to the defense under the discovery provisions of Federal Rule of Criminal Procedure 16. The District Court found that the government's withholding of the exhibit did not justify a new trial. The prosecutor also conceded that Dr. York's records did not establish that the conversation occurred on May 14, 1982, Post-Trial Tr. 397-98, and admitted that he (the prosecutor) was never certain that the conversation had occurred on that date. Post-Trial Tr. 388.

The defense presented a witness who testified that the prosecutor had stated to him that he believed the phone call happened in October, 1982 -- a date proposed by neither Holmes nor Wiley nor Judge Nixon. Post-Trial Tr. 460-61. The defense presented two other witnesses who testified that while turkey-hunting in April 1983, they learned that Bud Holmes was holding several turkeys for Judge Nixon. Post-Trial Tr. 267-308, 511-24. These witnesses confirmed Holmes' recollection that he was holding turkeys for Judge Nixon, but placed the event in 1983, as Holmes had suggested to the grand jury in his February 1985 testimony. And both parties presented contradictory evidence concerning whether the hair-pulling quarrel occurred in 1982 or 1983. Compare Post-Trial Tr. 463-503 and Post-Trial Tr. 308-37. Needless to say, the dating of the conversations was not significantly clarified at the post-trial hearing.

|  | CHARGES | TESTIFIED BEFORE GRAND JURY | PROSECUTOR'S STATEMENTS RE NIXON | OUTCOME | SENTENCE |
|---|---|---|---|---|---|
| WILEY FAIRCHILD | 1 count of offering an illegal gratuity<br>1 count perjury before the grand jury (9/84) | 7/18-19/84;<br>11/28/84 | He could make a deal if he gave the prosecutors information about Nixon | Plea bargain for one count of offering illegal gratuity; Gov't recommended no jail time. | Twenty-four months, with all but 2 months suspended; served in halfway house. |
| JOHN STOCKS | 1 count obstruction of justice<br>3 counts perjury during Petit Bois civil trial<br>(10/31/85) | N/A | Offered complete immunity if he would testify that he bribed Nixon in the Petit Bois case. | Acquitted | None |
| EUGENE LEWIS | 1 count obstruction of justice<br>1 count perjury before the grand jury<br>(10/31/85) | 5/30/85 | Told on October 29, 1985 that he would be indicted unless he had material incriminating information of bribery of Nixon in Petit Bois case. | Acquitted | None |
| PAUL "BUD" HOLMES | 4 counts perjury before the grand grand jury<br>1 count obstruction of justice<br>(3/29/85) | 7/20/84;<br>9/5/84;<br>2/21/85;<br>6/28/85 | Told on March 27, 1985 that he did not have to be indicted if he filled in the gaps in the investigation, which meant incriminating information about Nixon. | Plea bargain for contempt of court | $10,000 fine, with one year sentence imposed improperly and never served. |
| WALTER NIXON | 1 count accepting illegal gratuity;<br>3 counts perjury before grand jury<br>(8/29/85) | 7/18/84 | N/A | Convicted on 2 perjury counts | Two five-year sentences, concurrent. |